

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION

MICHAELA UNDERWOOD, as the  
duly appointed Administratrix  
of the Estate of James Aaron  
McBrayer, Deceased; SHERRI  
McBRAYER, Individually and as  
the surviving spouse of James  
Aaron McBrayer, Deceased, and;  
SAMUEL AARON McBRAYER, by and  
through his mother and natural  
guardian ANGIE McBRAYER, and  
JORDAN JANICE McBRAYER, the  
surviving children of James  
Aaron McBrayer, Deceased,

Plaintiffs,  
vs.

CIVIL ACTION NO.:  
7:21-CV-00040-WLS

HON. GENE SCARBROUGH,  
Individually and in his  
official capacity as Sheriff  
of Tift County Georgia, CLIFF  
HENDERSON, Individually and in  
his official capacity as a  
Lieutenant Deputy Sheriff of  
Tift County, Georgia, ANTHONY  
RAYMOND TRIPP, Jr.,  
Individually and in his  
official capacity as Deputy  
Sheriff of Tift County,  
Georgia, CONNOR BRENNEN  
SPURGEON, Individually and in  
his official capacity as  
Deputy Sheriff of Tift County,  
Georgia, and AXON ENTERPRISE,  
INC. of DE, a Delaware  
Corporation,

Defendants.

\_\_\_\_\_/   
VIDEOTAPED DEPOSITION OF ANTHONY R. TRIPP, JR.  
TAKEN ON 9/22/2021

VIDEOTAPED DEPOSITION OF  
ANTHONY R. TRIPP, JR.

Wednesday, September 22nd, 2021  
Commencing at 10:13 a.m.  
Concluding at 6:20 p.m.

Hall Booth Smith, PC  
1564 King Road  
Tifton, Georgia 31793

Reported by Michelle Subia, RPR, CCR  
5817-0834-4721-4080

APPEARANCES:

FOR THE PLAINTIFFS:

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FOR DEFENDANTS SCARBROUGH, HENDERSON, TRIPP &  
SPURGEON

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ALSO APPEARING:

FRANK ALTMAN, VIDEOGRAPHER

INDEX

WITNESS PAGE

ANTHONY R. TRIPP, JR.

Examination by Ms. Nguyen	7
Examination by Mr. Spurlin	121
Further Examination by Ms. Nguyen	359
Examination by Mr. Williams	368

PLAINTIFF EXHIBITS

NUMBER PAGE

Exhibit 8	TASER Instructor Guide	220
Exhibit 10	CEW Applicant Certification	223
Exhibit 11	TASER PowerPoint	225
Exhibit 16	Use of Force Policy 3.01	167
Exhibit 27	Course Attendance Sheet	151

DEFENDANT EXHIBITS

NUMBER PAGE

Exhibit 1	Tifton Incident Report	19
Exhibit 2	Aerial	22
	Photographs/Composite	
Exhibit 2A	Aerial Photograph	30
Exhibit 2B	Aerial Photograph	30
Exhibit 2C	Aerial Photograph	30
Exhibit 2D	Aerial Photograph	30
Exhibit 3	TASER Log	63
Exhibit 4	TASER Policy	75
Exhibit 5	Officer Profile	78
Exhibit 6	TASER PowerPoint Excerpt	81
Exhibit 7	Report of Autopsy	88
Exhibit 8	10/30/18 TASER Warnings	96
Exhibit 9	3/1/13 TASER Warnings	116

THE VIDEOGRAPHER: We are now on the record.

This begins videotape number one in the deposition of Deputy Anthony Trip, Jr. in the matter of Michaela Underwood, as the duly appointed Administratrix of the Estate of James Aaron McBrayer, Deceased, et al. vs. Honorable Gene Scarborough, Individually, and in his official capacity as Sheriff of Tift County, Georgia, et al., In The United States District Court for the Middle District of Georgia, Valdosta Division.

Today is September 22nd, and the time is 10:08. This deposition is being held at 244 -- I beg your pardon, that is the wrong address -- at 1564 King Road, Tifton, Georgia, at the request of Axon Enterprises, Inc.

The videographer is Frank Altman of Magna Legal Services. And the court reporter is --

THE COURT REPORTER: Michelle Subia.

THE VIDEOGRAPHER: Will counsel all -- and all parties present state their appearances and who they represent.

MS. NGUYEN: Amy Nguyen, representing Axon Enterprise, Inc.

MR. SPURLIN: I'm Johnny Spurlin. And along with Mr. Craig Webster, we represent the

Page 6

1 plaintiffs.

2 MR. WILLIAMS: Terry Williams, and I  
3 represent Sheriff Scarborough and all the deputies  
4 named as defendants.

5 THE VIDEOGRAPHER: Will the court reporter  
6 please swear in the witness.

7 THE COURT REPORTER: Please raise your right  
8 hand.

9 Do you swear or affirm the testimony you're  
10 about to give will be the truth, the whole truth,  
11 and nothing but the truth?

12 THE WITNESS: I do.

13 THE COURT REPORTER: Thank you.  
14 (Witness sworn.)  
15  
16 - - -  
17  
18  
19  
20  
21  
22  
23  
24  
25

Page 7

1 ANTHONY R. TRIPP, JR.,  
2 having been produced and first duly sworn,  
3 testified as follows:

4 EXAMINATION

5 BY MS. NGUYEN:

6 Q Good morning.

7 A Good morning.

8 Q Can you please state your full name --

9 A Yes.

10 Q -- for the record?

11 A Yes, ma'am. My name is Anthony Ray Tripp,  
12 Jr.

13 Q And any aliases you go by, nicknames?

14 A I go by -- my nickname's TJ.

15 Q TJ?

16 A Yes, ma'am.

17 Q I met you earlier just before this  
18 deposition. My name is Amy Nguyen, and I represent one  
19 of the named defendants in this matter, Axon  
20 Enterprise, Inc.

21 Do you understand that you are here to  
22 testify as both a witness and a named defendant in this  
23 matter?

24 A Yes, ma'am.

25 Q I understand that you were deposed relating

Page 8

1 to this incident in the State Court matter back on  
2 June 10th, 2020?

3 A Yes, ma'am.

4 Q Do you recall that?

5 A I do. Yes, ma'am.

6 Q Okay. So you're familiar with the rules of a  
7 deposition, correct?

8 A Yes, ma'am.

9 Q I will just go over just two of the rules  
10 that I have, and that is really pertaining to my  
11 questioning. If you have any unclarity or questions  
12 about my questions, please do not answer, just ask me  
13 to clarify if you don't understand at all, okay?

14 A Yes, ma'am.

15 Q If you do answer, I'm going to assume that  
16 you understood my question; fair enough?

17 A Yes, ma'am.

18 Q And, also, I try to take a break every hour.  
19 If you need something sooner than that, just, let me  
20 know, and we'll take a break. The only condition to  
21 that is if I do have a question pending, I ask that you  
22 answer that question first, and then we'll go ahead and  
23 take a break; fair enough?

24 A Yes, ma'am.

25 Q Okay. Deputy Tripp, do you understand that

Page 9

1 the family of James McBrayer has brought suit against  
2 you, Deputy Spurgeon, Sheriff Scarbrough, and Axon  
3 relating to his death?

4 A Yes, ma'am.

5 Q Do you understand that the specific  
6 allegation that they have against you, at least one of  
7 them, is that you used excessive force -- excessive and  
8 unreasonable force against Mr. McBrayer? You  
9 understand that?

10 A Yes, ma'am.

11 MR. SPURLIN: Can I just ask a clarification?  
12 Are we reserving all objections except as to form  
13 and responsiveness?

14 MS. NGUYEN: Form and foundation, yeah.

15 MR. SPURLIN: (Nodding head affirmatively.)

16 MR. WILLIAMS: That's fine.

17 MR. SPURLIN: I just wanted to make sure.

18 MR. WILLIAMS: I think that's what the rule  
19 provides, whether we say it or not.

20 MR. SPURLIN: I do too. But I just wanted to  
21 be clear before we get halfway through it.

22 MS. NGUYEN: Yeah.

23 MR. WILLIAMS: And we're going to reserve  
24 signature, just to note that for the record.

25 MS. NGUYEN: You want to read and sign?

3 (Pages 6 to 9)

Page 10

Page 11

1 MR. WILLIAMS: Read and sign, yeah.  
 2 MS. NGUYEN: Yeah.  
 3 BY MS. NGUYEN:  
 4 Q All right. Deputy Tripp, are you aware that  
 5 Georgia Bureau of Investigations conducted an  
 6 investigation into the reasonableness of your  
 7 interaction with Mr. McBrayer?  
 8 A Yes, ma'am.  
 9 Q And did you participate in that investigation  
 10 voluntarily?  
 11 A Yes, ma'am, I did.  
 12 Q Are you aware of the result of that  
 13 investigation?  
 14 A I mean, I'm not sure that I'm understanding  
 15 what you're asking as far as the result.  
 16 Q Sure.  
 17 Do you understand that GBI, the Georgia  
 18 Bureau of Investigations -- you know what GBI is,  
 19 right?  
 20 A Yes, ma'am.  
 21 Q Okay. That they conducted an investigation  
 22 and they sent it over to the District Attorney's Office  
 23 to determine whether criminal charges should be brought  
 24 against you?  
 25 A Yes, ma'am.

1 Q And do you understand what the outcome of  
 2 that determination was?  
 3 A It was my understanding that no -- no charges  
 4 were filed at that time.  
 5 Q And was it also your understanding that they  
 6 were specifically looking at whether you used excessive  
 7 or unreasonable force against Mr. McBrayer?  
 8 A Yes, ma'am.  
 9 Q And as a result of that investigation to  
 10 date, have you been charged with any criminal offense  
 11 relating to use of force or treatment of Mr. McBrayer?  
 12 A No, ma'am.  
 13 Q I want to get some background. You're  
 14 currently employed at Tift County?  
 15 A Yes, ma'am.  
 16 Q And how long have you been there?  
 17 A I started with Tift County in -- when I  
 18 graduated the -- I actually started with them before I  
 19 graduated the academy. They're the ones that sent me  
 20 through the academy. I started with them the end of  
 21 2017. I graduated the academy in March of 2018, and I  
 22 was employed with Tift County Sheriff's Office until  
 23 December of 2019.  
 24 Q Okay.  
 25 A In December of 2019, I left Tift County

Page 12

Page 13

1 Sheriff's Office. I went to Lenox Police Department.  
 2 Q Can you spell that for me, Lenox?  
 3 A L-e-n-o-x.  
 4 Q Okay.  
 5 A I worked there full time. I worked in Omega  
 6 Police Department part time at that point. And then in  
 7 August of '21 -- no, I'm sorry. I'm sorry. August of  
 8 '20, August of 2020, I came back to Tift County  
 9 Sheriff's Office full time.  
 10 Q Okay. You originally said that you had  
 11 worked with Tift County Sheriff's Office prior to going  
 12 to the academy in 2017; is that correct?  
 13 A Yes, ma'am.  
 14 Q In what capacity was that in?  
 15 A Yes, ma'am. So I -- I worked in the jail a  
 16 little bit, and then I was also conducting what they  
 17 call a pre-academy, just to prepare me for the academy.  
 18 Q And how long were you working in the jail  
 19 prior to going to the academy?  
 20 A I just worked in the jail a few days. Again,  
 21 it was just part of the pre-academy process.  
 22 Q Okay.  
 23 A I was never actually employed as a jailer.  
 24 Q And then what brought you -- when you went to  
 25 Lenox PD -- and I understand from reading your prior

1 deposition that the benefits were -- were better --  
 2 A Yes, ma'am.  
 3 Q -- than they were at Tift County; is that  
 4 right?  
 5 A Yes, ma'am.  
 6 Q And so what brought you back to Tift County  
 7 Sheriff's Office in August of 2020?  
 8 A I decided to come back to Tift County  
 9 Sheriff's Office just because the -- the call volume in  
 10 Lenox just wasn't what I was accustomed to. It wasn't  
 11 to my -- to my liking.  
 12 I think I had eight calls in the nine months  
 13 that I worked there. So it just -- it really wasn't a  
 14 fast enough pace for my liking.  
 15 Q And when you were at both Lenox PD and Omega  
 16 PD, you were at Omega, part time, right?  
 17 A Correct.  
 18 Q And a patrol officer for both agencies?  
 19 A Yes, ma'am.  
 20 Q And what is your current position at Tift  
 21 County?  
 22 A I am a traffic deputy with Tift County.  
 23 Q And was that the same position that you were  
 24 in back on April 24th, 2019, the date of this incident?  
 25 A No, ma'am.

4 (Pages 10 to 13)

Page 14

Page 15

1 Q What position were you in on April 24th?

2 A I was a patrol deputy.

3 Q Okay. So tell me what the difference is  
4 between a patrol deputy and a traffic deputy.

5 A Patrol deputy answers calls for service  
6 predominantly. You also serve papers, warrants,  
7 subpoenas, civil papers, things of that nature.

8 A traffic deputy you mainly focus on traffic  
9 stops and interstate -- interstate traffic. As a  
10 traffic deputy, I do still answer calls, but that's  
11 only when the shift becomes backed up and -- and they  
12 need assistance with answering calls. But  
13 predominantly my job is to work traffic.

14 Q And have you been a traffic deputy since you  
15 went back to Tift County in August of 2020.

16 A No, ma'am. I started back out on patrol.  
17 And I believe around October of 2020 I was moved back  
18 to traffic.

19 Q When you say "moved back to traffic," had you  
20 been a traffic deputy previously?

21 A I was. I was a traffic deputy when I left.  
22 I don't remember when I was put on traffic. I was a  
23 traffic deputy when I left Tift County.

24 Q Okay. You currently carry a TASER conducted  
25 energy weapon, correct?

1 A Yes, ma'am.

2 Q And if I say "CEW," do you know what that  
3 means?

4 A I do. Yes, ma'am.

5 Q And what does that mean?

6 A It's a conducted energy weapon.

7 Q Okay. And so you understand that TASER is  
8 the brand of the device but the device is called the  
9 conducted energy weapon, correct?

10 A Yes, ma'am. I do understand that.

11 Q And what model are you currently carrying?

12 A I believe it's the X26.

13 Q And is that the same model that you used in  
14 the incident with Mr. McBrayer?

15 A Yes, ma'am, it is.

16 Q Have you ever worked in the training  
17 department at Tift County?

18 A No, ma'am.

19 Q What about the other agencies that you were  
20 at?

21 A No, ma'am.

22 Q Do you have any additional -- any  
23 certifications other than I -- I know you're TASER  
24 certified, correct?

25 A I am, yes, ma'am.

Page 16

Page 17

1 Q Any additional certifications?

2 A I am part of the crisis intervention team.  
3 Other than that, I don't have any other specific  
4 certifications.

5 I'm sorry, I do have speed detection.

6 Q Speed detection?

7 A Yes, ma'am. I'm laser certified, radar  
8 certified, Intoxilyzer 9000 certified.

9 Q What about CPR?

10 A Yes, ma'am. I am CPR certified.

11 Q Okay. And when did you become part of the  
12 CIT Team?

13 A I don't remember exactly when it was. It  
14 would have been -- I don't know. I don't remember.

15 Q Now, is there a difference between going  
16 through CIT training and then actually becoming part of  
17 the team or are they one in the same?

18 A No, ma'am, they're one in the same.

19 Q So I think it's in one of your records, the  
20 date of that training, so we'll go through that in just  
21 a bit.

22 A Yes, ma'am.

23 Q As far as your education, what is your  
24 highest level of education?

25 A I have a bachelor's degree, and I'm currently

1 working on my second bachelor's degree.

2 Q And where did you obtain your bachelor's  
3 degree?

4 A University of Phoenix.

5 Q And that's in criminal justice?

6 A Yes, ma'am. Yes, I hold a bachelor's degree  
7 in criminal justice.

8 Q And what year did you obtain that?

9 A 2015.

10 Q You said you were currently working on  
11 another bachelor's degree?

12 A Yes, ma'am.

13 Q And where -- where are you doing that?

14 A That's also with the University of Phoenix,  
15 and that's for public administration.

16 Q Is there anything specific that you want to  
17 do with that degree?

18 A My aspiration is to be a sheriff one day.

19 Q Great.

20 I also understand you were in the military,  
21 right?

22 A Yes, ma'am. I still am.

23 Q And in the Reserves currently?

24 A I'm in the Army National Guard.

25 Q And when did you join the military?

5 (Pages 14 to 17)

Page 18

1 A I joined the military February 25th, 2002.  
 2 Q And I understand that you were military  
 3 police?  
 4 A Yes, ma'am.  
 5 Q In what years were you doing that?  
 6 A I was in military police from 2006 until  
 7 2017.  
 8 Q When you were with military police, did you  
 9 ever receive any training or carry a TASER CEW?  
 10 A No, I never did have a TASER when I was in  
 11 military police. No, ma'am.  
 12 Q Okay. Going to April 24th, 2019, that's the  
 13 date of the incident with Mr. McBrayer. At that time,  
 14 you were patrol deputy, correct?  
 15 A That is correct.  
 16 Q And as a patrol deputy, were you assigned to  
 17 any specific area, or they call them beats?  
 18 A We do have zone assignments.  
 19 Q Zone.  
 20 A I couldn't tell you what zone I was assigned  
 21 to that night because we shift zones every -- every  
 22 rotation. So if we work two days on, I'll be in one  
 23 zone. And then the next day that we come on, I'll be  
 24 in another zone.  
 25 Q Okay. So it was just rotated out?

Page 20

1 this report -- first of all, you prepared this the same  
 2 date of the incident, correct?  
 3 A Yes, ma'am. That is correct.  
 4 Q And it states there that you responded to the  
 5 area of 303 Hall Road in Tifton, Georgia.  
 6 Do you see that?  
 7 A Yes, ma'am, I do.  
 8 Q And it says it's in reference to a person  
 9 yelling for help.  
 10 Is that accurate?  
 11 A To the best of my recollection, yes.  
 12 Q Can you let me know what information had you  
 13 received? I assume the information is coming from  
 14 dispatch, correct?  
 15 A Yes, ma'am.  
 16 So typically in my reports, I would put  
 17 exactly what we were dispatched to. So if I was  
 18 dispatched, then I would put the information that I  
 19 had.  
 20 So my belief at that point is the only  
 21 information that I had was that somebody was in the  
 22 area yelling for help.  
 23 Q Okay. And then if we go below where it says,  
 24 "Investigative Supp" -- do you see that?  
 25 A Yes, ma'am, I do.

Page 19

1 A Yes, ma'am.  
 2 Q And were you assigned a partner at that time?  
 3 A No, ma'am.  
 4 Q And what shift were you working?  
 5 A I was on night shift.  
 6 Q When did that start and end?  
 7 A Night shift is from 6:00 p.m. to 6:00 p.m.  
 8 MS. NGUYEN: I'll mark this as Exhibit 1,  
 9 please. And I only have one copy for you guys.  
 10 (Defense Exhibit No. 1 was marked for  
 11 identification.)  
 12 BY MS. NGUYEN:  
 13 Q Deputy Tripp, I'm showing you what's been  
 14 marked as Exhibit 1.  
 15 Do you recognize this document?  
 16 A Yes, ma'am, I do.  
 17 Q And what is it that we're looking at?  
 18 A This is the report that I completed the day  
 19 of the incident.  
 20 Q Is there any other reports that you completed  
 21 in relation to this incident?  
 22 A No, ma'am, I don't think so.  
 23 Q Okay. No supplements?  
 24 A No, ma'am.  
 25 Q Okay. Now, according to -- at the top of

Page 21

1 Q It says, "Dispatch received additional call  
 2 about a person yelling in that area."  
 3 Do you see that?  
 4 A Yes, ma'am.  
 5 Q Did you -- had you -- at the time that you  
 6 arrived to that area, did you have any additional  
 7 information?  
 8 A No, ma'am, I didn't.  
 9 Q And were you responding in a -- to also  
 10 assist Deputy Spurgeon?  
 11 A I actually responded as a secondary unit just  
 12 because of the nature of the call.  
 13 Q And what do you mean by that, "the nature of  
 14 the call"?  
 15 A Because it was somebody yelling for help, we  
 16 were unclear on -- on what the situation was. We  
 17 typically would not send one deputy to a call of that  
 18 nature. We would send multiple, or at least two, until  
 19 we get there and determine what's actually going on.  
 20 Q Okay. And so did you already know Deputy  
 21 Spurgeon was on his way?  
 22 A Yes, ma'am.  
 23 Deputy Spurgeon was actually dispatched to  
 24 the call. I went as a secondary unit.  
 25 Q Okay. Can you describe to me when you

6 (Pages 18 to 21)



Page 22

1 arrived to the area -- and this is 303 Hall Road?  
2 That's the first area you went to?

3 A It was actually in the vicinity of. I'm not  
4 sure exactly what address we went to. We didn't go to  
5 an address initially, but it was in the area of 303  
6 Hall Road.

7 Q And when you arrived, Deputy Spurgeon was  
8 already there?

9 A Yes, ma'am.

10 MS. NGUYEN: I'm going to mark that as  
11 Exhibit 2, please.

12 (Defense Exhibit No. 2 was marked for  
13 identification.)

14 BY MS. NGUYEN:

15 Q Exhibit 2 is several aerial photos of the  
16 area. And I'll just direct your attention to the first  
17 one.

18 Do you see there's a structure there with the  
19 address 303 Hall Road, Tifton, Georgia? Do you see  
20 that?

21 A Yes, ma'am, I do.

22 Q And then there's -- if you look to the left  
23 of that photo, it has "Hall Road"?

24 A Correct.

25 Q Does that help orient you to the area?

Page 23

1 A It does. Yes, ma'am.

2 Q And so is the area that you first responded  
3 to on this first photo of Exhibit 2?

4 A Yes, ma'am.

5 Q Can you mark on that aerial the area where  
6 you first arrived and saw Deputy Spurgeon?

7 A I don't recall. I'm not sure where it would  
8 have been in that area.

9 Q Okay. Are you able to narrow it down at all  
10 from this aerial in relation to Hall Road and the  
11 structure 303 Hall Road?

12 A No, ma'am.

13 I know that it was -- it was along the  
14 roadway. It wasn't -- it wasn't at 303 Hall Road.  
15 Again, the call was in the area of.

16 Q Okay.

17 A So I actually go in the area once I hit Hall  
18 Road, not -- not that specific address.

19 Q Understood.

20 So you -- you didn't really pull off of Hall  
21 Road into any of these other smaller roads?

22 A No, ma'am.

23 Q Okay.

24 A At this point when I went in the area, I was  
25 on Hall Road.

Page 24

1 Q Understood.

2 And you see that driveway that -- off of Hall  
3 Road that leads to 303 Hall Road?

4 A I do.

5 Q That structure?

6 A Yes, ma'am.

7 Q Are you able to say in relation to that road  
8 off of Hall Road where you were when you met Deputy  
9 Spurgeon?

10 A Again, I don't -- I mean, I don't remember.

11 Q Okay. And feel free to look -- I'm just  
12 trying to get an idea, because what we also understand  
13 is that's where there was a truck that had been in a  
14 one vehicle accident; is that right?

15 A Yes, ma'am.

16 But, again, I don't remember exactly where  
17 that took place.

18 Q Somewhere off of Hall Road?

19 A Yes, ma'am. It was on Hall Road.

20 Q Okay. Now, looking at page three of  
21 Exhibit 2 and also page four of Exhibit 2, there's  
22 multiple structures. And this, I will tell you, is at  
23 the address of 381 Hall Road.

24 A Yes, ma'am.

25 Q Does that look familiar to you?

Page 25

1 A Yes, ma'am, that does.

2 Q And how does that look familiar?

3 A Because this is where I encountered  
4 Mr. McBrayer.

5 Q Now, this location where you encountered  
6 Mr. McBrayer, where was it in relation to the truck  
7 that you found that was involved in this  
8 single-incident collision?

9 A I mean, it was --

10 Q As far as directionally?

11 A So that would be west.

12 Q So 381 Hall Road is west of where the truck  
13 was?

14 A No. 381 is east, I believe.

15 Q East of where the truck was?

16 A East of where the truck was.

17 Q Okay.

18 A Yes, ma'am.

19 Q Okay. So when you arrived there, describe  
20 what happened.

21 A Are you talking about --

22 Q And I'm referring to when you first met up  
23 with Deputy Spurgeon, what conversations were had?

24 A Okay. I met up with Deputy Spurgeon, and he  
25 was out with a vehicle that was in the ditch. And I

7 (Pages 22 to 25)

Page 26

1 explained to Deputy Spurgeon that I was going to  
2 continue to ride to see if we could determine who was  
3 -- who was asking for help.

4 As I proceeded towards 381, I was driving  
5 down the road with LED lights on, which are the lights  
6 that illuminate the left and right of my vehicle. And  
7 I was driving slowly with the windows down.

8 As I approached 381, I could hear somebody  
9 yelling, so I pulled into the -- forgive me. I can  
10 show you.

11 Q Yeah. Let me stop you there because I'm  
12 going to ask a few more questions --

13 A Okay. I'm sorry.

14 Q -- prior to that point.

15 No, that's okay.

16 A Yes, ma'am.

17 Q This is at approximately 5:00 in the morning,  
18 right?

19 A Yes, ma'am.

20 Q So what was the lighting like at that time?

21 A It was relatively dark.

22 Q At the time that you met up with Deputy  
23 Spurgeon, was there anyone else out there that deputy  
24 Spurgeon was speaking to?

25 A Not that I can -- not that I recall, no,

Page 27

1 ma'am.

2 Q Okay. Apparently McBrayer's ex-wife had come  
3 to the area and had a discussion with Deputy Spurgeon.  
4 Did you see that at all?

5 A No, ma'am, I didn't.

6 Q Did you investigate the vehicle that was in  
7 the ditch at all?

8 A No, ma'am.

9 Q Did you see anyone else around other than  
10 Deputy Spurgeon?

11 A No, ma'am.

12 Q Did you believe the occupant -- occupant of  
13 that truck could have been the person that was asking  
14 for help?

15 A That was certainly a possibility.

16 Q Okay. So then as you're going down 381 Hall  
17 Road with your window down -- excuse me -- just going  
18 down Hall Road --

19 A Yes, ma'am.

20 Q -- with your window down, then you start to  
21 hear yelling in the area of 381?

22 A Yes, ma'am.

23 Q Okay. You were going to show me on Exhibit 2  
24 which -- which photo are you looking at?

25 A I'm looking at number three.

Page 28

1 Q Okay.

2 A And it's got the house. It's got what  
3 appears to be like a shed structure. And then there's  
4 a metal structure in it, like a dirt lot. I entered  
5 into that dirt lot.

6 Q Okay. Can you just put a large circle --

7 A Yes, ma'am, I can.

8 Q -- where you entered from Hall Road?

9 Can I take a look at that, please?

10 A Yes, ma'am.

11 Q Okay. And then just draw a line down,  
12 because I'm going to have you mark several things  
13 throughout this deposition.

14 A Yes, ma'am.

15 Q If you can just draw a line down and indicate  
16 that that's the place where you entered.

17 A Like that?

18 Q Great. Thank you.

19 A Yes, ma'am.

20 Q Can you write in "entered here" or something  
21 like that?

22 A I can, yes, ma'am.

23 Q If you can do that. Thank you.

24 MR. WILLIAMS: Are we identifying these  
25 various photographs collectively as Exhibit 2 by

Page 29

1 individual -- the numbers one, two, three, four  
2 or --

3 MS. NGUYEN: Yeah. We can go ahead and mark  
4 them. I recognize that they were not numbered.  
5 BY MS. NGUYEN:

6 Q So just in the order that I provided them to  
7 you, one, two, three, four.

8 A I moved them around after I unclipped them.  
9 I don't know which one's --

10 MS. NGUYEN: Madam Court Reporter, would you  
11 mind doing that for me?

12 THE COURT REPORTER: Sure.

13 MS. NGUYEN: Thank you.

14 MR. WILLIAMS: You want to do them separately  
15 exhibits? It might be easier if we just mark them  
16 separately. Just my suggestion.

17 MS. NGUYEN: I prefer to do for the order of  
18 the remainder of the deposition just 2 --

19 MR. WILLIAMS: Exhibit 2?

20 MS. NGUYEN: We can do A, B, C, D.

21 MR. WILLIAMS: Okay. This would be Exhibit  
22 2B.

23 THE WITNESS: You want A, B, C, D?

24 MR. WILLIAMS: The one you just marked on,  
25 that's going to be Exhibit 2C, right?

8 (Pages 26 to 29)



Page 30

Page 31

1 MS. NGUYEN: Right.

2 MR. WILLIAMS: And then the last page is  
3 going to be Exhibit 2D.

4 Now, we can flip back and forth. And you  
5 were on 2C, right?

6 THE WITNESS: Yes, sir.

7 MS. NGUYEN: 2C.

8 MR. WILLIAMS: Okay.

9 (Defense Exhibit Nos. 2A, 2B, 2C, 2D were  
10 marked for identification.)

11 BY MS. NGUYEN:

12 Q Okay. So when you were on Hall Road -- I  
13 want to make sure I understand your testimony  
14 correctly -- the window is down and you hear somebody  
15 yelling, and that's when you turn off in the dirt area  
16 you indicated?

17 A Yes, ma'am.

18 Q Is that right?

19 A Yes.

20 Q Okay. When is the first time that you saw  
21 Mr. McBrayer?

22 A When I pulled into that lot, I saw  
23 Mr. McBrayer leaned up against this -- the structure in  
24 the back of that lot.

25 Q Okay. Can you put an X and then draw a line

1 and say Mr -- first saw Mr. McBrayer as to where his  
2 location was?

3 A (Witness complies.)

4 Q Do you mind if I take a look at that?

5 A Yes, ma'am.

6 MS. NGUYEN: Can you see that?

7 MR. SPURLIN: When you get old, you can't  
8 see.

9 BY MS. NGUYEN:

10 Q Did you pull your car in with the headlights  
11 pointed to where Mr. McBrayer was at that time?

12 A No, I did not. And the reason that I didn't  
13 is because as soon as I pulled in, Mr. McBrayer took  
14 off running around behind the building.

15 Q So what was he doing right when you saw him?

16 A When I saw him, he was leaned up against the  
17 side of the building. He was kind of in a crouched  
18 position. His elbows were on his knees.

19 Q And was he still yelling at that time?

20 A I don't remember.

21 Q At that point, could you make out anything of  
22 what he was saying when you heard the yelling, either  
23 then or when you were at the road?

24 A No, ma'am, not at that point.

25 Q And then you said as soon as you pulled in,

Page 32

Page 33

1 he ran around the corner?

2 A Yes.

3 Q Is that right?

4 A Yes, ma'am.

5 I believe that he slapped the building. He  
6 slapped the side of that metal structure, and then ran  
7 around to the right side as if he was running behind  
8 the building.

9 Q Okay. And can you indicate that --

10 A Yes, ma'am.

11 Q -- on photo 2C?

12 A (Witness complies.)

13 Q Thank you.

14 A I just placed an arrow. And it's kind of  
15 hard to see, but I placed an arrow right here just  
16 showing the direction that he went.

17 Q Okay.

18 A I'm sorry. Yes, sir. So the direction is  
19 this way.

20 Q Do you know directionally what that would be?

21 A That would be -- I believe it would be west,  
22 the west side of the building that he ran around.

23 Q And what did you do next?

24 A I exited my vehicle. I'm sorry. I pulled my  
25 vehicle up to this -- this point right here. And

1 that's when I angled my headlights towards the  
2 direction that he ran.

3 And I exited my patrol vehicle. And at that  
4 point, he was already running back around towards the  
5 front of the building.

6 Q Okay. Can you draw kind of a rectangle to  
7 indicate where you pulled your patrol vehicle up to?

8 A Yes, ma'am.

9 Please forgive me, this is not to scale by  
10 any means.

11 Q Oh, that's okay. Can I take a look?

12 A Yes, ma'am.

13 Q Thank you.

14 So the purpose of pulling your vehicle up at  
15 that point was to get the headlights on him so you  
16 could see better?

17 A Yes, so I can see him.

18 Q Is that right?

19 A Yes, ma'am.

20 Q Okay. You said at that point he started  
21 running back?

22 A Yes, ma'am, he was running back. And, again,  
23 forgive me. Like I said, my -- it's not to scale. But  
24 if I'm not mistaken, this is a lean-to, and it's  
25 actually -- actually, this is where the backhoe was,

9 (Pages 30 to 33)

Page 34

1 was under the lean-to.

2 Q I don't know -- I can't see where you're  
3 pointing.

4 A So if I'm not mistaken, the darker part right  
5 here is a lean-to. So when he ran around, he actually  
6 ran in between here because there's a backhoe parked  
7 under that lean-to.

8 THE VIDEOGRAPHER: Can we move these bottles  
9 right here?

10 THE WITNESS: Oh, yes, sir. I'm sorry.

11 BY MS. NGUYEN:

12 Q So it would be kind of underneath --

13 A Yes, ma'am.

14 Q -- there where the backhoe was located?

15 A Yes, ma'am.

16 Q And when he started running back, where did  
17 he go?

18 A When he started running back towards me, he  
19 crouched behind the backhoe bucket underneath the  
20 lean-to.

21 Q How far would you estimate he was from where  
22 you were standing at that point?

23 A If I had to make a rough estimation -- and,  
24 again, this is just an estimation -- I would say  
25 probably 30 to 35 feet.

Page 36

1 At the same time, I also pulled my TASER out  
2 just because of the -- the way he was acting. He was  
3 yelling things such as "God hates you." And at that  
4 point, again, not knowing any information about what  
5 was going on, I decided to pull my TASER.

6 I started giving Mr. McBrayer commands to  
7 come out and show me his hands because at this point,  
8 he's behind the backhoe bucket. His arms are flailing  
9 around.

10 I don't know what's behind that backhoe  
11 bucket. All I know is he's not complying with what I'm  
12 asking him to do at this point. He's already fled away  
13 from me. And now, like I said, I can't -- I can't  
14 really see what he's doing.

15 At that point, I do position myself a little  
16 better to get a better view of what -- what's he doing  
17 behind the backhoe bucket. At least at this point, I  
18 can see his hands. I'm still giving Mr. McBrayer  
19 commands to come out, show me your hands, come out.  
20 And he takes a step from behind the backhoe bucket and  
21 he charges directly at me.

22 Q So you gave the commands for him to come out;  
23 is that correct?

24 A Yes, ma'am, I did.

25 Q Any other commands that you recall giving at

Page 35

1 Q Now, before -- up until this point, did you  
2 know if Mr. McBrayer was on drugs?

3 A No, ma'am.

4 Q Had anyone told you that he had mental health  
5 issues?

6 A No, ma'am.

7 Q Did you know if he had any criminal history?

8 A No, ma'am.

9 Q Did you know if he had a weapon?

10 A No, ma'am.

11 Q Did you know if anyone was with him, whether  
12 it be near him or inside the residence?

13 A No, ma'am.

14 Q Did you know if he was the one that needed  
15 help or if he caused somebody else to need help?

16 A No, ma'am. There was no way for me to be  
17 able to indicate that.

18 Q Were you intending at that time to make  
19 contact with him to learn more information?

20 A That was my attempt, yes.

21 Q So when he hid behind the backhoe, describe  
22 what happened next.

23 A He hid behind the backhoe bucket, and I -- I  
24 illuminated him with my flashlight to try to get a  
25 better view of what he was doing.

Page 37

1 that time?

2 A I do know that I told him to show me his  
3 hands several times.

4 Q Come out and show his hands?

5 A Yes, ma'am.

6 Q And did he comply with any of those commands?

7 A Until the point that he charged at me, no.

8 Q He was -- you said that he was yelling "God  
9 hates you."

10 Can you recall anything else that he was  
11 yelling?

12 A No, ma'am, I -- I don't know.

13 Q When you say you couldn't see his hands,  
14 based upon your training and experience as a law  
15 enforcement officer, what does that mean to you?

16 A I mean, it certainly means to me that there's  
17 a possibility of danger. And I say "a possibility"  
18 because I don't know for certain what his intent is at  
19 that point. But it's the nature of the call and that  
20 uncertainty together that definitely heightened my  
21 alert.

22 Q And is it also that if you can't see his  
23 hands, you also don't know if he's carrying any weapon?

24 A Correct.

25 MR. SPURLIN: Object to the form.

10 (Pages 34 to 37)

Page 38

1 BY MS. NGUYEN:

2 Q In your prior deposition testimony, you  
3 testified that he seemed very agitated; is that  
4 accurate?

5 A Yes, ma'am, it is.

6 Q He also seemed angry?

7 A I would -- I would use those together, yes,  
8 ma'am.

9 Q You also testified he was hostile; is that  
10 accurate as well?

11 A Yes, ma'am.

12 Q And very aggressive?

13 A Yes, ma'am.

14 Q Why would you say that he seemed very  
15 agitated?

16 A I would say that he seemed very agitated  
17 because of the -- his demeanor when I initially got  
18 there. When I say that his arms were flailing, he  
19 was -- he was throwing them above his head. He was  
20 yelling.

21 And, again, he was yelling things such as  
22 "God hates you." And I don't remember what else he was  
23 saying. But just his overall demeanor, you know, the  
24 yelling, the flailing of the arms, it appeared to me as  
25 if he was -- if he was agitated.

Page 40

1 have been a possibility.

2 Q You testified that once he went behind the  
3 backhoe and was hiding and you were observing this  
4 agitated behavior, that you had pulled out your TASER  
5 X26; is that right?

6 A That is correct.

7 Q And is that your department issued TASER?

8 A Yes, ma'am.

9 Q And at that point, did you point it at  
10 Mr. McBrayer?

11 A I did, yes, ma'am.

12 Q And why?

13 A At that point, it was to show force to  
14 attempt to get him to follow my commands.

15 Q Did you intend to deploy your TASER CEW at  
16 that time or was it more to be prepared?

17 A No, ma'am.

18 At that point in time, it was just  
19 preemptive. It was to be prepared.

20 Q You testified that you were also using your  
21 flashlight; is that correct?

22 A Yes. Now, I did previously state that I did  
23 not have my flashlight. However, I watched the video,  
24 and my flashlight was in my hand.

25 Q Okay. I was just going to ask you that

Page 39

1 Q You also mentioned that he had already ran  
2 from you?

3 A Yes, ma'am.

4 Q What significance does that have to you?

5 A Well, typically -- and, again, with the  
6 nature of the call, I wasn't exactly sure what his role  
7 in that call was. However, based on my experience,  
8 somebody that typically needs help doesn't -- doesn't  
9 run away from you. They come towards you.

10 So at that point, it just -- it made me  
11 concerned that, you know, maybe I wasn't there to help  
12 him. Maybe he was the reason that somebody was yelling  
13 for help at that point.

14 Q Did you see any injuries that you could  
15 observe on Mr. McBrayer?

16 A No, ma'am.

17 Q Based on your training and experience, at  
18 that point did you have a suspicion that he was on  
19 drugs?

20 A I had a suspicion, yes.

21 Q And why was that?

22 A Just because of his -- again, his demeanor,  
23 the way that he was acting. But, again, it was a  
24 suspicion. I didn't know anything about Mr. McBrayer  
25 prior to this. But I believe that it certainly may

Page 41

1 because that I know --

2 A Yes, ma'am.

3 Q -- in your prior testimony, you -- you said  
4 that you just relied upon the flashlight that was on  
5 the TASER, correct?

6 A Yes, ma'am.

7 So the last time I gave testimony, I wasn't  
8 able to see the video prior to. I was able to watch  
9 the video, and I did have my flashlight in my hand.

10 Q And did that also help refresh your memory  
11 when you viewed that video?

12 A Yes, ma'am.

13 Q So when you activate the TASER -- and I know  
14 we aren't there yet -- but you activate the TASER, does  
15 that automatically turn the flashlight on as well?

16 A Yes, ma'am.

17 Q At that point when you had pulled out your  
18 X26P, was it activated?

19 A Can you elaborate on "activated," for me,  
20 please?

21 Q Yeah.

22 So it's my understanding that when you pull  
23 it out, it's not turned on; is that correct?

24 A That is correct.

25 Q And that you actually have to turn the safety

11 (Pages 38 to 41)

Page 42

1 off --  
 2 A Correct.  
 3 Q -- for it to become activated?  
 4 A Yes, ma'am.  
 5 Q And then if you actually want to deploy it,  
 6 then you pull the trigger; is that accurate?  
 7 A That is correct.  
 8 Q Okay. So when you -- my question to you is  
 9 when you said that you drew your TASER CEW, you pointed  
 10 it at Mr. McBrayer, was it activated at that time?  
 11 A Yes, ma'am, it was.  
 12 Q And when activating it, it also provides you  
 13 with the laser dot?  
 14 A Yes, ma'am.  
 15 Q Do you recall whether you placed that laser  
 16 dot on Mr. McBrayer?  
 17 A Yes, ma'am, I did.  
 18 Q In your training, whether it -- any of your  
 19 training with the department, including the TASER  
 20 training that you received, did you -- were you trained  
 21 that that is a form of deescalation?  
 22 A Yes, ma'am, that is.  
 23 Q How so?  
 24 A Because typically when -- typically if  
 25 somebody sees that dot, they know that -- they know

Page 44

1 MS. NGUYEN: Got it. So you're reserving  
 2 that objection?  
 3 MR. SPURLIN: Aren't I required to?  
 4 MS. NGUYEN: Well, I'm saying if you're going  
 5 to continuously -- I mean, you can reserve that  
 6 objection throughout the deposition as opposed to  
 7 just stating --  
 8 MR. WILLIAMS: That is an objection to form.  
 9 MS. NGUYEN: Right.  
 10 MR. WILLIAMS: She's saying that's reserved.  
 11 MS. NGUYEN: Right.  
 12 MR. WEBSTER: That's what's not reserved.  
 13 MS. NGUYEN: That's --  
 14 MR. SPURLIN: That's what's not reserved.  
 15 That's what I have to make or waive.  
 16 MR. WILLIAMS: Oh, I see what you're saying.  
 17 Okay. Then you all can discuss that.  
 18 MR. SPURLIN: Isn't that true? That's what  
 19 we stipulated to is --  
 20 MR. WILLIAMS: Well, I don't know that it --  
 21 MR. SPURLIN: -- that we have to make  
 22 objections to form or else they're waived.  
 23 MR. WEBSTER: That's the rule.  
 24 MS. NGUYEN: Right.  
 25 MR. SPURLIN: If you want to stipulate that I

Page 43

1 that TASER is on them and they -- if they have ever  
 2 been tased before, then they understand that there's a  
 3 possibility of them being tased.  
 4 And typically -- and I say "typically" based  
 5 on the experiences that I've had -- typically that  
 6 makes them become compliant, because they don't want to  
 7 be tased.  
 8 Q And based upon your training and experience,  
 9 do most people know what a TASER is?  
 10 A Yes, ma'am.  
 11 Q And so what you're saying is that can  
 12 convince them -- just by seeing it -- convince them to  
 13 comply without actually having to deploy it?  
 14 A Yes, ma'am.  
 15 Q Is that right?  
 16 MR. SPURLIN: Object to the form.  
 17 MS. NGUYEN: What is your objection to form?  
 18 MR. SPURLIN: Well, how about leading,  
 19 because it --  
 20 MS. NGUYEN: But I'm able to lead. I'm an  
 21 adverse.  
 22 MR. SPURLIN: Maybe you are. Maybe you are  
 23 not. I'm not sure you all are adverse. But at  
 24 the time at the use of this, you certainly may not  
 25 be adverse.

Page 45

1 can reserve all objections, including leading and  
 2 form, I won't have to make them. And I have not  
 3 as --  
 4 MS. NGUYEN: No, we'll go ahead.  
 5 MR. SPURLIN: -- to many of your --  
 6 MS. NGUYEN: No. I understand.  
 7 MR. SPURLIN: -- preliminary questions.  
 8 MS. NGUYEN: No. We'll go ahead and  
 9 continue.  
 10 MR. SPURLIN: All right. Well, I'm going to  
 11 make them about every time then.  
 12 MS. NGUYEN: Well, you can make them when you  
 13 feel it's appropriate to make them and you have a  
 14 good-faith basis to do so.  
 15 MR. WILLIAMS: But to save time, you could  
 16 just say "object to the form" and you don't have  
 17 to say all the rest.  
 18 MR. SPURLIN: That's all I said.  
 19 MS. NGUYEN: Yeah, that's all he should be  
 20 saying.  
 21 MR. SPURLIN: That's all I've said every  
 22 time.  
 23 MS. NGUYEN: Otherwise it's a speaking  
 24 objection.  
 25 MR. WILLIAMS: Yeah, that's good.

12 (Pages 42 to 45)

Page 46

Page 47

MS. NGUYEN: Okay.

MR. SPURLIN: I didn't speak -- just for the record, I didn't speak or make a speaking objection until you inquired. You specifically asked me what was the basis for my objection.

MS. NGUYEN: Absolutely. I didn't say that you --

MR. SPURLIN: So don't suggest that I made a speaking objection.

MS. NGUYEN: I didn't suggest that at all. I said you only would object to form; otherwise, it would be a speaking. I never said that you made a speaking objection. And I, in fact, asked you the basis of the objection.

MR. SPURLIN: Yes, you did.

MS. NGUYEN: Okay. So there's -- there's no suggestion there.

MR. SPURLIN: Okay.

BY MS. NGUYEN:

Q Okay. At that point that you have your TASER CEW pointed at Mr. McBrayer, had he complied with your commands, would you have deployed your X26P?

A No, ma'am.

Q Now, at that time that he's hiding behind the backhoe, do you recall whether you had asked for

backup?

A I had. As soon as he went behind the backhoe bucket and -- I'm sorry, shortly after he went behind the backhoe bucket, I did get on my radio and I called for Deputy Spurgeon to come to my location.

Q And what was the purpose of calling for that backup?

A Because at that point, he had not complied with my lawful orders, as well as his -- again, his demeanor, and the uncertainty of what his role was in this situation that we had. I knew that Deputy Spurgeon was the closest backup that I had.

Q Prior to him charging at you that you've described, when he was hiding behind the backhoe, was there any hurry at that point? Meaning could you have just waited for him to stay behind that backhoe until Deputy Spurgeon arrived?

MR. WILLIAMS: Object to the form.

Go ahead.

THE WITNESS: I certainly could have waited. Yes, I could have waited. There really was no urgency to get him from the backhoe bucket at that point other than the unknown, if there were any weapons behind it, and not knowing if he had any weapons on him.

Page 48

Page 49

BY MS. NGUYEN:

Q And so -- but could you have waited at the time that he charged you?

A No.

Q When he -- you said that he ran straight towards you; is that right?

A Yes, ma'am.

MR. SPURLIN: Object to the form.

BY MS. NGUYEN:

Q Were you able to see his facial expressions?

A I was. He looked angry. I recall that his hands were above his -- his hands were above his head while he was running at me. And I took his actions as him being hostile towards me.

Q And where was he looking? Do you recall?

A I don't remember.

Q Did you have any reason to believe at that point that he was just going to run right past you?

A No, ma'am.

Q Based upon all of your observations of his conduct, was it your belief that he was actually charging at you?

A Yes, ma'am.

MR. SPURLIN: Object to the form.

BY MS. NGUYEN:

Q Did you have a belief at that point that he was intending to assault you?

MR. SPURLIN: Object to the form.

THE WITNESS: Yes, ma'am.

BY MS. NGUYEN:

Q Why is that?

A Well, again, I have to go back to what his demeanor was when I got there. He seemed to be very angry, very agitated. He did not comply with my commands to come out, other than when he ran directly at me.

And, again, it's my belief that, you know, if somebody's seeking assistance from law enforcement, they're not going to run full speed at me and they're not going to run towards me with their -- with their hands in the air as if they're, you know, possibly trying to attack me or strike me.

Q Did you believe him to be an immediate threat?

A Yes.

MR. SPURLIN: Object to the form.

BY MS. NGUYEN:

Q At that point, did you have an opportunity to find out more information about Mr. McBrayer?

A No, ma'am.

13 (Pages 46 to 49)



Page 50

1 Q Did you -- other than what you've described  
2 as the deescalation tactic of just displaying your  
3 TASER and putting the laser on him, did you have any  
4 opportunity to engage in any other deescalation  
5 tactics?

6 A No, ma'am.

7 Q Would you agree that the concept of  
8 deescalation assumes that you have the time to do so?

9 MR. SPURLIN: Object to the form.

10 THE WITNESS: Correct.

11 BY MS. NGUYEN:

12 Q And why would you agree with that? What is  
13 your training on that?

14 A Well, in order to deescalate -- deescalation  
15 is a technique that you used if the time and  
16 circumstances permit. If they don't, you know, if  
17 somebody is actively trying to assault me or if I  
18 perceive that they're actively trying to assault me,  
19 then I'm not going to -- I'm not going to have time to  
20 try to say, sir, please calm down or how can I help  
21 you, because I do still have a right and an obligation  
22 to defend myself and others.

23 Q If the subject becomes an immediate threat of  
24 arm, is deescalation an option?

25 A No, ma'am.

Page 52

1 don't recall his arm position or anything of that  
2 nature.

3 Q How far would you estimate he was from you at  
4 the time of deployment?

5 A At the time of deployment, I would say he  
6 was -- he was somewhere around 10 feet.

7 Q Now, does that -- when you deploy, do you  
8 extend your arms out from your body taking the shooting  
9 stance?

10 A Yes, ma'am.

11 Q Do you know what I mean when I refer to the  
12 "shooting stance"?

13 A Yes, ma'am, I do.

14 Q Can you demonstrate that for us?

15 A Yes, ma'am.

16 So the shooting stance is going to be --  
17 typically you would be squared up and you would be with  
18 your arms punched out in front of you.

19 Q And so how long would you estimate your arms  
20 are?

21 A 3 feet, 4 feet.

22 Q Okay.

23 A I'm not sure.

24 Q And so that would -- the distance from you  
25 and Mr. McBrayer, we would have to then subtract your

Page 51

1 Q Going back to Exhibit 2C, I understand that  
2 you did, in fact, deploy your TASER CEW on  
3 Mr. McBrayer, correct?

4 A Yes, ma'am, I did.

5 Q On 2C, can you indicate, to your best  
6 recollection, where you were standing and where  
7 Mr. McBrayer was standing at the time of the  
8 deployment?

9 A (Witness complies.)

10 Q And then if you can just --

11 A So I put an "X" for me and I put an "O" for  
12 Mr. McBrayer.

13 Q Okay. Thank you.

14 Do you recall --

15 A Thank you.

16 Q -- his body position at the time of  
17 deployment?

18 A Can you -- can you elaborate on that, please?

19 Q Sure.

20 Was he straight on, both shoulders straight  
21 towards you? Was he standing to one side or the other?  
22 Were his arms raised or down? What do you recall about  
23 that?

24 A The best I can recall when I deployed my  
25 TASER, Mr. McBrayer was still running towards me. I

Page 53

1 arm length --

2 A Yes.

3 Q -- correct?

4 MR. SPURLIN: Object to the form.

5 THE WITNESS: Yes, ma'am.

6 BY MS. NGUYEN:

7 Q So that would actually bring the TASER CEW a  
8 little bit closer to Mr. McBrayer?

9 A Yes, ma'am.

10 MR. SPURLIN: Object to the form.

11 THE WITNESS: Approximately seven.

12 BY MS. NGUYEN:

13 Q Did you see --

14 Well, first let me ask you, do you recall  
15 where you actually targeted the probes?

16 A No, ma'am.

17 Q Did you see them actually make contact with  
18 Mr. McBrayer?

19 A No, ma'am, I didn't.

20 Q Did you give any warning to him that you were  
21 going to deploy the TASER before deployment?

22 A Can you elaborate on "warning"? So I did --

23 Q Any type of verbal warning.

24 A I did state "TASER" three times before I  
25 deployed my TASER.

14 (Pages 50 to 53)

Page 54

Page 55

1 Q So you actually said "TASER, TASER, TASER"?  
 2 A Yes, ma'am.  
 3 Q And is that consistent with the training that  
 4 you received?  
 5 A Yes, ma'am.  
 6 Q You testified previously that Mr. McBrayer  
 7 seemed unaffected; is that accurate?  
 8 A Yes, ma'am.  
 9 Q From the -- from the TASER CEW deployment,  
 10 correct?  
 11 A Yes, ma'am.  
 12 Q And why do you say that?  
 13 A Because the TASER is designed to manipulate  
 14 muscles, which typically causes muscle failure. And in  
 15 this situation, it never did that. Mr. McBrayer was  
 16 still able to move and actually ran away from me  
 17 initially after I deployed my TASER.  
 18 Q Did you have -- first let me ask you, when  
 19 you went through your TASER certification, did you  
 20 receive a voluntary exposure yourself?  
 21 A Yes, ma'am, I did.  
 22 Q And what was the result of your exposure, as  
 23 far as its effect on you?  
 24 A My exposure is I was clipped on the bottom of  
 25 my -- or on the top of my boot and the back of my

1 pants. And it affected all the muscles between the two  
 2 probes. It locked those muscles up, and I was actually  
 3 not able to get up off the ground at all until it  
 4 was -- until it completed its cycle.  
 5 Q And was it a full five-second cycle?  
 6 A Yes, ma'am.  
 7 Q And based upon that experience, as well as  
 8 the additional training that you received, what would  
 9 you normally expect with an effective TASER CEW  
 10 deployment?  
 11 A I would expect the same type of behavior from  
 12 someone that I deployed my CEW against. And I would  
 13 also -- I would also expect not to be able to hear the  
 14 electricity.  
 15 When you have an effective deployment, it's  
 16 actually relatively quiet and you won't hear that  
 17 popping sound.  
 18 Q And so when it's not effective or not  
 19 creating neuromuscular incapacitation -- do you  
 20 understand that to be NMI from your training?  
 21 A Yes, ma'am.  
 22 Q Okay. So when it's not creating NMI, what  
 23 sound does it make?  
 24 A It makes like an arcing sound.  
 25 Q And when you deployed on Mr. McBrayer, did

Page 56

Page 57

1 you hear that arcing sound?  
 2 A At the time I deployed it, I didn't really  
 3 take note of the arcing sound initially. I do remember  
 4 hearing it after the initial attempt. But going back  
 5 and seeing my video, I believe that that sound is there  
 6 throughout the duration of every iteration.  
 7 Q Based upon your training and experience,  
 8 somebody -- when there is an effective deployment, is  
 9 that individual able to run?  
 10 A No, ma'am.  
 11 Q Prior to the deployment, you mention in your  
 12 report that you were attempting to keep your distance  
 13 by kind of backtracking or backpedaling?  
 14 A Yes, ma'am.  
 15 Q Is that right?  
 16 A It is.  
 17 Q Tell me about that.  
 18 A When Mr. McBrayer ran at me initially, I was  
 19 trying to create distance in hopes that he would -- he  
 20 would stop or change directions. And at the point that  
 21 I realized that he was closing that gap further or  
 22 faster than I could create it, that's when I made the  
 23 decision to deploy my TASER.  
 24 Q After deployment, you say that Mr. McBrayer  
 25 ran away.

1 Could you -- at that point, could you see the  
 2 wires? Are they still attached to the probes? Do you  
 3 recall?  
 4 A I don't recall. I don't know.  
 5 Q How far -- well, I'll just say your report  
 6 estimates approximately 20 feet that he ran; is that  
 7 accurate?  
 8 A Yeah, I believe it says 25 but --  
 9 Q It's the first page. It's Exhibit 1, about  
 10 two-thirds of the way down. The sentence starts  
 11 "James" --  
 12 A It is -- yes, ma'am. I'm sorry, it is  
 13 20 feet.  
 14 Q Twenty feet.  
 15 A I apologize.  
 16 Q That's okay.  
 17 Is that still accurate --  
 18 A Yes, ma'am.  
 19 Q -- to your recollection?  
 20 And then --  
 21 MR. SPURLIN: Object to the form.  
 22 BY MS. NGUYEN:  
 23 Q -- you state "Before stopping and dropping to  
 24 his hands and knees"?  
 25 A Correct.

15 (Pages 54 to 57)

Page 58

1 Q At that point, did you -- how did you  
2 interpret him stopping and dropping to his knees as far  
3 as was he intending to comply?

4 A That was my belief at that point, yes. My  
5 belief is that when he dropped down, that he was  
6 submitting to an arrest at that point.

7 Q And so what did you do next?

8 A I approached Mr. McBrayer and attempted to  
9 take him into custody. And he rolled over, and he got  
10 back up, and he ran at me again, so I attempted to  
11 deploy my TASER again.

12 Let me -- by deploying my TASER, I'm assuming  
13 that the probes are still in Mr. McBrayer. I just want  
14 to clarify that I'm not reattaching another cartridge.  
15 I am still using the same cartridge that I previously  
16 deployed.

17 Q Right.

18 The X26P that you have, it's a single-shot  
19 device, correct?

20 A That is correct.

21 Q As opposed to one that has two cartridges --

22 A Yes, ma'am.

23 Q -- a double shot?

24 A Correct.

25 Q And so if you wanted to deploy a second

Page 59

1 cartridge, you would actually have to remove that  
2 cartridge, the spent cartridge, and put in a new one,  
3 right?

4 A Correct.

5 MR. SPURLIN: Object to the form.

6 BY MS. NGUYEN:

7 Q And you did not do that here, correct?

8 MR. SPURLIN: Object to the form.

9 THE WITNESS: No, ma'am, I did not.

10 BY MS. NGUYEN:

11 Q With the X26P, if you make -- made good  
12 contact with the probes, you can reactivate it?

13 MR. SPURLIN: Object to the form.

14 THE WITNESS: Yes.

15 BY MS. NGUYEN:

16 Q And how do you do that?

17 A All you do is just pull the trigger again and  
18 it will cycle for another five seconds.

19 Q And so is it fair to say that the first  
20 connection has to be good in order for any subsequent  
21 reactivation to work?

22 MR. SPURLIN: Object to the form.

23 THE WITNESS: I would assume, yes.

24 BY MS. NGUYEN:

25 Q So why did you -- oh, go ahead.

Page 60

1 A Unless -- unless at some point that  
2 connection goes from no connection to having a positive  
3 connection. You know, if -- if he gets tangled up in  
4 the wires, something like that, then it can be  
5 effective afterwards.

6 But typically, yes, if the first -- if the  
7 probes don't make that initial contact, then you're not  
8 going to have a successful deployment.

9 Q And so given that the first deployment didn't  
10 seem to have any effect on Mr. McBrayer, why did you  
11 choose to attempt to reactivate the same probes as  
12 opposed to putting in another cartridge?

13 MR. SPURLIN: Object to the form.

14 THE WITNESS: Honestly, I just -- I really at  
15 that point didn't have time because of everything  
16 that was going on, Mr. McBrayer actively coming  
17 towards me. I didn't want to take the risk of  
18 trying to change those cartridges and not having  
19 any effect because I dropped the new cartridge or,  
20 you know, something of that nature.

21 BY MS. NGUYEN:

22 Q When he was down on his hands and knees and  
23 you thought he was going to comply, you said that you  
24 attempted to place him under arrest at that point?

25 A Yes, ma'am.

Page 61

1 Q Did you give him any commands?

2 A I don't remember. I don't recall.

3 MR. WILLIAMS: Amy, would this be a good  
4 point for just a short restroom break?

5 MS. NGUYEN: Yeah. Absolutely.

6 THE VIDEOGRAPHER: Stand by.

7 We're going off the record. The time is  
8 11:09 a.m.

9 (Whereupon, a recess was taken.)

10 THE VIDEOGRAPHER: We're back on the record.

11 The time is 11:17.

12 BY MS. NGUYEN:

13 Q Deputy, I believe where we left off, you were  
14 describing that Mr. McBrayer was originally down on his  
15 hands and knees, you attempted to place him in custody,  
16 that he got up and advanced towards you again.

17 Do you recall that?

18 A Yes, ma'am.

19 Q Can you describe to me how he advanced toward  
20 you again?

21 A If I remember correctly, he -- he charged at  
22 me. He came running directly at me again.

23 Q And did you believe him to be an immediate  
24 threat at that time?

25 MR. SPURLIN: Object to the form.

16 (Pages 58 to 61)

Page 62

1 THE WITNESS: Yes, ma'am.

2 BY MS. NGUYEN:

3 Q Why?

4 A Because, again, with him previously running  
5 towards me with his arms, you know, above his head, he  
6 went to the ground. I took that as him submitting. As  
7 soon as I touched him, he jumped up and started running  
8 at me again. I took that as a hostile act towards me.

9 Q Your report mentions that he actually hit you  
10 in the face; is that right?

11 A Yes, ma'am, it is. I know that he struck me  
12 in the face. I don't recall if it was -- if it was at  
13 that point or not. I would have to refer you to the  
14 video on that one as far as the time frame. But I do  
15 know that he struck me in the face, and it knocked me  
16 to the ground.

17 Q When you attempted to reactivate the TASER  
18 deployment by pulling the trigger, did that have any  
19 effect on Mr. McBrayer, based upon your observations?

20 A No, ma'am, it didn't.

21 Q And why do you say that?

22 A Because, again, he was -- he was able to --  
23 he was able to function, even after I redeployed the  
24 TASER. It didn't -- it didn't have the effect that  
25 it's supposed to have on your muscles as far as, you

Page 63

1 know, tensing up and becoming immobilized.

2 Q So what did he do at that point?

3 A I don't remember. Let me see here.

4 Okay. So --

5 Q Go ahead.

6 A According to my report, and looking at my  
7 report, after I reactivated my TASER, I do remember  
8 that he ran away from me again. He got down on his  
9 knees. And that's right -- that's when Deputy Spurgeon  
10 arrived on the scene.

11 Deputy Spurgeon and I both took that as him  
12 submitting to arrest. And Deputy Spurgeon came up  
13 behind him and attempted to take him into custody.

14 Q When you say "attempted to take him into  
15 custody," do you mean place handcuffs on him?

16 A Yes, ma'am. He attempted to place handcuffs  
17 on him.

18 (Defense Exhibit No. 3 was marked for  
19 identification.)

20 BY MS. NGUYEN:

21 Q I believe you have Exhibit 3 there in front  
22 of you.

23 Have you seen this document before?

24 A No, I have not.

25 Q Are you -- based upon your training, are you

Page 64

1 aware that the TASER X26P creates an internal log of  
2 the events of the TASER?

3 A Yes, ma'am, I did know that.

4 Q And do you know the serial number to your  
5 TASER X26P?

6 A I do not.

7 Q Well, I will tell you that this is the event  
8 log that was downloaded from your X26P.

9 Do you have any reason to disagree with that?

10 MR. WILLIAMS: You mean the one he had at the  
11 time?

12 THE WITNESS: Correct. Yeah. Because I've  
13 got a different one now.

14 MS. NGUYEN: At the time, that's correct.

15 Thank you.

16 BY MS. NGUYEN:

17 Q At the time of this incident?

18 A I have no reason to disbelieve that, no,  
19 ma'am.

20 Q After the incident, did you turn over your  
21 TASER to the GBI?

22 A I did.

23 Q Do you know whether or not somebody  
24 downloaded it to get the events off of it?

25 A I would be -- I would be making an

Page 65

1 assumption. I was told they did, but I don't -- I  
2 wasn't there when that happened.

3 Q You didn't have any involvement in the  
4 download?

5 A No, ma'am.

6 Q Did you have the ability to download your  
7 device or would you give that to a superior to do?

8 A No, I can't download it. No, ma'am.

9 Q Who has the ability to download it? Who  
10 would you give it to?

11 A I mean, I would utilize my chain of command  
12 and give it to my lieutenant. However, he doesn't have  
13 the ability to download it either. As far as I can  
14 recall, nobody at the sheriff's office has that  
15 ability. GBI would have to be the ones to do that.

16 Q Referring you to page nine of Exhibit 3. Do  
17 you see the far left column, it has -- it is titled  
18 "SEQ" number or sequence number?

19 A Yes, ma'am.

20 Q Now, if you would just follow that down to  
21 sequence number 249, and let me know when you're there.

22 A Yes, ma'am.

23 Q Okay. And then there it has -- if you go  
24 over to the next column -- the date of April 24th,  
25 2019.

17 (Pages 62 to 65)

Page 66

1 Do you see that?  
 2 A I do.  
 3 Q And would you agree that that's the date of  
 4 the incident with Mr. McBrayer?  
 5 A Yes, ma'am.  
 6 Q And then over to the right column of that, it  
 7 has -- that column is titled "Event Type."  
 8 Do you see that?  
 9 A I do.  
 10 Q And it says "Armed"?  
 11 A Correct.  
 12 Q So according to this, it shows the device was  
 13 armed at 5:03:40 on April 24th, 2019.  
 14 Does that sound accurate to you?  
 15 A Yes, ma'am.  
 16 Q Okay. Going below to sequence numbers 250,  
 17 251, 252 and 253.  
 18 Do you see that?  
 19 A I do.  
 20 Q Those show the same date of April 24th,  
 21 correct?  
 22 A That is correct.  
 23 Q And then if you go over to the next column,  
 24 it has event type as all of those being triggered.  
 25 Do you see that?

Page 68

1 A That --  
 2 Q -- reactivate?  
 3 A That's correct.  
 4 Q Okay. And then the last sequence number  
 5 there is 254, event type "Safe"?  
 6 A Yes, ma'am.  
 7 Q Would that be when you put it -- the safety  
 8 back on the device?  
 9 MR. SPURLIN: Object to the form.  
 10 THE WITNESS: Again, I would be making an  
 11 assumption to say that that's correct.  
 12 BY MS. NGUYEN:  
 13 Q So you don't know if --  
 14 A I don't --  
 15 Q I'm trying to understand your answer.  
 16 A I know that I placed it back on safe.  
 17 Q Okay.  
 18 A I don't know that that's what that means on  
 19 this paper.  
 20 Q Got you. Okay.  
 21 So your recollection, though, is once you  
 22 deployed and attempted to reactivate, that you had  
 23 placed the device back in safe mode?  
 24 A Yes, ma'am.  
 25 MR. SPURLIN: Object to the form.

Page 67

1 A I do. Yes, ma'am.  
 2 Q So it -- and then actually the next column  
 3 over shows duration in seconds, where it shows five  
 4 seconds for each.  
 5 Do you see that?  
 6 A I do.  
 7 Q So according to this report, the trigger on  
 8 your device was pulled four times from 5:04:16 to  
 9 5:04:46.  
 10 Do you see that?  
 11 A I do.  
 12 Q Do you believe that to be accurate with your  
 13 recollection?  
 14 A Yes, ma'am.  
 15 Q Now, as you sit here today, do you  
 16 specifically recall pulling the trigger on your device  
 17 four times?  
 18 A No, ma'am. I don't recall that specifically,  
 19 no.  
 20 Q So is it your testimony today that you recall  
 21 pulling the trigger the first time to deploy it,  
 22 correct?  
 23 A Yes, ma'am. I do recall that.  
 24 Q And that you attempted to reactivate but you  
 25 just don't recall how many attempts you made to --

Page 69

1 BY MS. NGUYEN:  
 2 Q So you stated that when Deputy Spurgeon  
 3 arrived on the scene, he attempted to take Mr. McBrayer  
 4 in custody, but then he -- what did Mr. McBrayer do  
 5 after that?  
 6 A Mr. McBrayer, at some point, kicked Deputy  
 7 Spurgeon in the knee. And I don't know what damage it  
 8 caused his knee. He would have to tell you that.  
 9 I do know that Deputy Spurgeon fell forward  
 10 onto Mr. McBrayer. When he -- when he fell, we were  
 11 able to gain control of his arms and essentially hold  
 12 him there until other deputies arrived.  
 13 Q Were you able to get the handcuffs on  
 14 Mr. McBrayer?  
 15 A Not at that point, no, ma'am.  
 16 Q And so at that point, were you on the ground  
 17 when -- with Mr. McBrayer, attempting to get handcuffs  
 18 on him?  
 19 A Yes, ma'am.  
 20 Q How long would you say you were on the ground  
 21 with Mr. McBrayer until you actually were able to get  
 22 the handcuffs on him?  
 23 A I have no idea, ma'am. I would have to refer  
 24 you to the video.  
 25 Q Did you ever put your knee on Mr. McBrayer's

18 (Pages 66 to 69)



Page 70

1 neck?  
 2 A No, I never placed my knee on his neck.  
 3 Q Did you ever hold his face down in the dirt?  
 4 A No, ma'am.  
 5 Q Did you put your hands on his shoulders to  
 6 hold him down?  
 7 A Yes, ma'am.  
 8 Q Do you recall putting your hands on his neck  
 9 at any point?  
 10 A Yes, ma'am.  
 11 Q And describe those to me.  
 12 A So let me -- let me be clear. After watching  
 13 the video, it did appear as if I put my hand on the  
 14 back of Mr. McBrayer's neck.  
 15 And the purpose for that is because of the  
 16 training that I have. Wherever your head goes, your  
 17 body is going to go. So even though my hand was on his  
 18 neck, I was not applying a significant amount of  
 19 pressure or holding his face in the dirt. You can  
 20 actually see in the video that he's able to move his  
 21 head around.  
 22 So the reason that I placed my hand on his  
 23 neck was if he did attempt to get up, then I was able  
 24 to control his head to keep him from getting up.  
 25 Q Were you able to see -- well, let me just ask

Page 72

1 A When we initially went to the ground,  
 2 Mr. McBrayer was on his back, and we were trying to get  
 3 him to roll over because it's easier to control what  
 4 he's doing when he's on his stomach. You know, we were  
 5 also attempting to take him into custody at that point,  
 6 put handcuffs on him. And that would be done behind  
 7 his back.  
 8 So at that point, we're giving him verbal  
 9 commands to roll over. He's still actively trying to  
 10 pull his arms away from us. And Deputy Spurgeon did  
 11 utilize his TASER to try to gain compliance.  
 12 Q Did you actually see him to attempt to  
 13 utilize his TASER?  
 14 A Yes, ma'am.  
 15 Q And how did he do that?  
 16 A So he did what they call a drive stun. So  
 17 there's two ways to deploy a TASER. You either deploy  
 18 the cartridge or you can do what they call a drive  
 19 stun, which is where you remove the cartridge and you  
 20 activate the TASER against their skin. So attempted to  
 21 do use a drive stun.  
 22 As soon as -- at some point, Mr. McBrayer was  
 23 able to just pull away from it. He was able to move  
 24 his body away from the TASER so it -- I'm not going to  
 25 attest to what effect it had because I don't know that.

Page 71

1 you. Deputy Spurgeon, was he also involved in holding  
 2 Mr. McBrayer down on the ground?  
 3 A Yes, ma'am.  
 4 Q Were you able to see what kind of contact he  
 5 had with Mr. McBrayer?  
 6 A I know that he was trying to get control of  
 7 his arm.  
 8 Q At that point, were you able to observe  
 9 Mr. McBrayer breathing?  
 10 A Yes.  
 11 Q Was he talking?  
 12 A He was.  
 13 Q Do you know what he was saying?  
 14 A He was yelling a lot of the -- or he was  
 15 saying a lot of the same things that he was saying  
 16 before "God hates you." And he was saying other  
 17 things. I just -- I don't recall exactly what he was  
 18 saying.  
 19 Q Okay.  
 20 A The one that really sticks in my mind is "God  
 21 hates you."  
 22 Q Did you see Deputy Spurgeon pull out his  
 23 TASER CEW?  
 24 A I did.  
 25 Q At what point was that?

Page 73

1 But I do know that once you move away from that  
 2 contact, then it's no longer effective.  
 3 Q Do you know in what location Mr. McBrayer's  
 4 body that Deputy Spurgeon applied his TASER?  
 5 A If I may, I would just rather refer you to  
 6 the video because I -- I don't recall exactly where,  
 7 and I don't want to be wrong.  
 8 Q Now, in drive stun mode, based upon your  
 9 training, is that able to cause NMI?  
 10 A Not -- no, not to the degree that -- not to  
 11 the degree that deploying that TASER and actually  
 12 getting the spread of the probes would. But, yes, to  
 13 some degree it does.  
 14 Q What is the purpose of a drive stun?  
 15 A The purpose of a drive stun is essentially  
 16 just to -- it gives you that brief moment of  
 17 connectivity so you can follow on. Essentially it just  
 18 buys you time for a follow on.  
 19 Q And based upon your training, is it for pain  
 20 compliance only?  
 21 A Yes.  
 22 MR. SPURLIN: Object to the form.  
 23 BY MS. NGUYEN:  
 24 Q Based upon your observation, did it have any  
 25 effect on Mr. McBrayer?

19 (Pages 70 to 73)

Page 74

1 A Based on my observation, no, because we still  
2 didn't gain compliance.

3 Q How did you -- how were you eventually able  
4 to get the handcuffs on?

5 A Essentially myself and Deputy Spurgeon were  
6 just able to hold Mr. McBrayer in place until more  
7 deputies got there. Once more deputies arrived, then  
8 we were able to get Mr. McBrayer's arms behind his back  
9 and put him in handcuffs.

10 Q And so did other deputies assist in getting  
11 him handcuffed?

12 A Yes, ma'am.

13 Q And who was that?

14 A I don't know directly who was involved in  
15 handcuffing him.

16 Q Do you recall what other deputies arrived to  
17 the scene?

18 A Yes, ma'am, I can tell you who was there.  
19 Deputy Calderon was there. Deputy Hancock was there.  
20 It's now Captain Henderson -- he was Lieutenant  
21 Henderson at the time -- was there.

22 Q And so why weren't you able to get the  
23 handcuffs on? Where were his arms?

24 A Deputy Spurgeon had one arm. But the arm  
25 that I was trying to gain control of was underneath

Page 75

1 Mr. McBrayer. And the entire time he was actively  
2 trying to get his arms away from us. So we weren't  
3 able to pull his arms out from under him and get them  
4 behind his back in a manner to be able to handcuff him.

5 Q I understand from your prior testimony there  
6 was also a hobble tie used?

7 A Yes, ma'am.

8 Q And why was that?

9 A A hobble strap was used because, you know,  
10 obviously Mr. McBrayer had fled and fought with us to  
11 some degree. And a hobble strap prevents someone from  
12 being able to kick.

13 Q Had he been kicking prior to that?

14 A I don't recall. But it also keeps him from  
15 being able to flee because it bounds his feet together.

16 And, I'm sorry, let me -- if you don't mind,  
17 I would like to make a correction. He did kick because  
18 he kicked Deputy Spurgeon in the knee.

19 Q Thank you.

20 MS. NGUYEN: This will be Exhibit 4.

21 (Defense Exhibit No. 4 was marked for  
22 identification.)

23 BY MS. NGUYEN:

24 Q Deputy Tripp, I'm showing you Exhibit No. 4.  
25 Do you recognize this?

Page 76

1 A Yes, I recognize it.

2 Q What is it?

3 A This is the Tift County Sheriff's policy for  
4 the conducted energy weapon, the TASER.

5 Q And to your knowledge, is this the policy  
6 that was in effect on the date of the incident with  
7 Mr. McBrayer?

8 A Yes, ma'am.

9 Q Are you familiar with this policy?

10 A Yes, ma'am.

11 Q Going down to -- well, first, would you agree  
12 that this is the policy that would cover the use of  
13 TASER conducted energy weapons?

14 MR. SPURLIN: Object to the form.

15 THE WITNESS: Yes, ma'am.

16 BY MS. NGUYEN:

17 Q And would that include the X26 that you used  
18 on Mr. McBrayer?

19 A That is correct.

20 Q Under paragraph one, it states there -- well,  
21 first, let's back up.

22 The first paragraph, the second sentence  
23 states "The TASER M26/X26 may be used when a subject is  
24 displaying active, aggressive or active, aggressive  
25 resistance to an employee attempting to conduct legal

Page 77

1 law enforcement activities."

2 Do you believe that Mr. McBrayer was  
3 displaying that behavior prior to your TASER  
4 deployment?

5 A Yes, ma'am, I do.

6 Q And which behavior would it be that is listed  
7 here on the policy?

8 A It would be the active, aggressive at the  
9 point that I deployed the TASER.

10 Q And would that be the case both for the  
11 initial deployment as well as the subsequent attempts  
12 to reactivate?

13 A Yes, ma'am.

14 Q Down at paragraph one, it states, "An  
15 approved TASER M26/X26 device may only be utilized by  
16 employees that have successfully completed the  
17 department approved training and its use taught by a  
18 certified instructor."

19 Do you see that?

20 A I do.

21 Q And was that your understanding, that you had  
22 to successfully complete department approved training  
23 before using your TASER CEW?

24 A Yes, ma'am.

25 Q And at the time of the incident, had you done

20 (Pages 74 to 77)

Page 78

1 that?

2 A Yes, ma'am.

3 Q And so when it says "Department approved  
4 training," do you understand that to be your  
5 department? Tift County Sheriff's Office has to  
6 approve the training?

7 A Yes, ma'am.

8 MS. NGUYEN: This is Exhibit 5.

9 (Defense Exhibit No. 5 was marked for  
10 identification.)

11 BY MS. NGUYEN:

12 Q I'm showing you Exhibit 5. This is your  
13 individual officer profile; is that correct?

14 A Yes, ma'am.

15 Q Have you seen this document before?

16 A I have.

17 Q Going to page two of that document -- well,  
18 first let me ask this.

19 Does this document, to your knowledge,  
20 capture all of the training history that you had as  
21 of -- it looks like it was created July 16th of 2019?

22 A Yes, ma'am.

23 Q So going to the second page, do you see there  
24 it looks like the seventh entry down dated December  
25 18th, 2018, it says "TASER Certification"?

Page 79

1 A Yes, ma'am.

2 Q And is that accurate that you received your  
3 TASER certification on that date?

4 A Yes, ma'am.

5 Q And over to the right, it has a number of  
6 hours. It shows eight?

7 A Yes, ma'am.

8 Q Is that your recollection that it was an  
9 eight-hour training?

10 A Yes, ma'am.

11 Q Do you recall who was the instructor for that  
12 training?

13 A I do. It was Major Torres.

14 Q And is Major Torres still with the  
15 department?

16 A He is.

17 Q And to your knowledge, at the time of this  
18 certification, was Major Torres a certified instructor?

19 A Yes, ma'am.

20 Q And at the time Major Torres was employed by  
21 Tift County, correct?

22 A Yes, ma'am.

23 Q Did your training also take place by Tift  
24 County -- or excuse me -- at Tift County?

25 A Yes, ma'am, it did.

Page 80

1 Q Where exactly? Do you have a training --

2 A It was in the squad -- squad room.

3 Q To your knowledge, was that training put on  
4 in any way by Axon?

5 A No, ma'am.

6 Q Was there any Axon or TASER -- formally TASER  
7 employees present during that training?

8 A No, ma'am.

9 Q Were you certified on the X26P model?

10 A Yes, ma'am.

11 Q Any other models?

12 A Not that I recall, no, ma'am.

13 Q As part of that certification, do you recall  
14 there being both a classroom and a practical portion to  
15 the training?

16 A Yes, ma'am.

17 Q What did you do in the classroom portion?

18 A The classroom portion you -- they present a  
19 PowerPoint presentation. And then you take a test at  
20 the end of that, at the conclusion of the PowerPoint.

21 Q And did you understand that as being part of  
22 the curriculum required by your department?

23 A Yes, ma'am.

24 MS. NGUYEN: That will be exhibit -- I think  
25 we're on five.

Page 81

1 THE COURT REPORTER: Six.

2 MR. WILLIAMS: Six.

3 THE WITNESS: Six.

4 MS. NGUYEN: Six.

5 (Defense Exhibit No. 6 was marked for  
6 identification.)

7 MS. NGUYEN: We actually need to -- before we  
8 get into this exhibit, we'll go ahead and take a  
9 quick break so the videographer can switch out  
10 tapes.

11 THE VIDEOGRAPHER: Thank you.

12 The time is 11:41. This ends medium number  
13 one. We're going off the record at 11:41.

14 (Whereupon, a recess was taken.)

15 THE VIDEOGRAPHER: This is the beginning of  
16 medium number two in the deposition of Deputy  
17 Anthony Tripp. The time is 11:54. We're on the  
18 record.

19 BY MS. NGUYEN:

20 Q Deputy Tripp, where we left off before the  
21 break, we were talking about your TASER certification  
22 training that was eight hours.

23 You testified that there was a classroom  
24 portion and a practical portion, and in the classroom  
25 portion you reviewed the PowerPoint that was part of

21 (Pages 78 to 81)

Page 82

1 the curriculum by Tift County, correct?

2 A Yes, ma'am.

3 Q Okay. So I believe you have Exhibit 6 in  
4 front of you. This is excerpts of the PowerPoint. But  
5 looking at the first page, it says "TASER X26P User  
6 Course." This one is Version 20.2, effective  
7 January 15th, 2018.

8 To your knowledge, is this the PowerPoint  
9 that would have been in effect during your training in  
10 December of 2018?

11 A Yes, ma'am.

12 Q And it looks like you've been going through  
13 that. And do you recognize this as in fact the  
14 PowerPoint that you would have reviewed during that  
15 training?

16 A Yes, ma'am, I do.

17 Q Okay. Going, to that first page of the  
18 exhibit, which is actually numbered page five, it  
19 states, "Release and Warnings Requirements. The  
20 Warning Acknowledgment: All students attending TASER  
21 User Certification courses will be required to  
22 acknowledge that they have read and understand the  
23 warnings prior to participating in any hands-on CEW  
24 drills required by the certification course."

25 Was that consistent with your understanding?

Page 84

1 Q And you would agree then that you understood  
2 TASER energy weapons, or TASER CEWs, can cause serious  
3 injury or death?

4 A Yes, ma'am.

5 Q Would you agree that all uses of force carry  
6 a risk of death or serious injury?

7 A Yes, ma'am.

8 Q And then at the bottom of that page, it  
9 states "Review and understand TASER current product  
10 warnings."

11 And you testified that you -- you reviewed  
12 and understood those warnings, correct?

13 A Yes.

14 Q Okay. The next page, which is actually  
15 numbered page six, it says -- the first bullet point  
16 there "TASER training does not set use of force  
17 policies, general orders, or procedures."

18 Do you agree that TASER training did not set  
19 those -- your use of force policies?

20 A I do, yes.

21 Q What is your understanding as to who set the  
22 policies that you had to follow regarding use of force?

23 A Tift County Sheriff's Office.

24 Q And specific -- more specifically, what is  
25 your understanding as to who set the policies regarding

Page 83

1 A Yes, ma'am.

2 Q And did you review the warnings prior to  
3 participating in that training?

4 A Yes, ma'am.

5 Q And when I say "warnings," I'm referring to  
6 the Axon or TASER product warnings about the TASER  
7 X26P.

8 Is that your understanding?

9 A Yes, ma'am.

10 Q Going to the next page, it states "TASER CEWs  
11 are not risk free."

12 Would you agree with that?

13 A Yes, ma'am.

14 Q It goes on to say they "Can temporarily  
15 incapacitate target." And this -- I'm sorry, this is  
16 under the warning that's in orange. And there's a  
17 picture in yellow to the left.

18 Do you see that?

19 A I do.

20 Q And it says they "Can temporarily  
21 incapacitate a target and can cause death or serious  
22 injury."

23 Deputy Tripp, was that your understanding  
24 when you went through this training in 2018?

25 A Yes, ma'am.

Page 85

1 your use of TASER CEWs?

2 A I'm sorry, I don't understand.

3 Q My first question was general uses of force,  
4 who set the policy?

5 A Okay.

6 Q And you said Tift County Sheriff's Office.

7 A Yes, ma'am.

8 Q My second question is just more specifically  
9 as to who sets the policies regarding your use and the  
10 standards of use of TASER CEWs?

11 A Tift County Sheriff's Office.

12 Q You would agree that Axon or TASER as the  
13 manufacturer of TASER CEWs cannot set the policy for  
14 you to follow on use of force?

15 MR. SPURLIN: Object to the form.

16 THE WITNESS: Correct.

17 BY MS. NGUYEN:

18 Q And, in fact, it does not set that policy on  
19 use of force; is that your understanding?

20 MR. SPURLIN: Object to the form.

21 THE WITNESS: Yes, it is.

22 BY MS. NGUYEN:

23 Q And you agree that you -- do you agree that  
24 you must follow your own agency policy when using a  
25 TASER CEW?

22 (Pages 82 to 85)

Page 86

1 A Yes, ma'am.  
 2 MR. SPURLIN: Object to the form.  
 3 BY MS. NGUYEN:  
 4 Q On the next page, which is numbered page  
 5 seven, it states "Each agency is responsible for  
 6 creating its own use of force policies and procedures."  
 7 Do you agree with that, Deputy Tripp?  
 8 MR. SPURLIN: Object to the -- object to the  
 9 form.  
 10 THE WITNESS: Yes, ma'am.  
 11 BY MS. NGUYEN:  
 12 Q On the next page, which is numbered 17, it  
 13 talks about neuromuscular incapacitation.  
 14 Do you see that?  
 15 A Yes, ma'am.  
 16 Q What do you understand that to mean,  
 17 neuromuscular incapacitation?  
 18 A My understanding of that is that it tenses  
 19 the muscles in that target area to the point where it  
 20 creates muscle failure.  
 21 Q The first bullet point there states "There  
 22 are different levels of neuromuscular  
 23 incapacitation" -- also referred to as NMI -- "ranging  
 24 from limited area effects to significant body lockup."  
 25 Is that something that you learned during

Page 88

1 A Yes, ma'am.  
 2 Q Is that also something that you learned?  
 3 A Yes, ma'am.  
 4 Q On the next page, which is numbered page 108,  
 5 it talks about "Deployment Distance Considerations."  
 6 Do you recall learning about what distances  
 7 you should obtain prior to deploying your TASER CEW?  
 8 A Yes, ma'am.  
 9 Q And by the distance, I'm referring to the  
 10 distance between your device and the subject.  
 11 Do you understand that?  
 12 A Yes, ma'am.  
 13 Q The last bullet point of this page states "A  
 14 minimum 12-inch probe spread is optimal."  
 15 Do you -- is that something that you learned  
 16 during your training?  
 17 A Yes, ma'am.  
 18 Q And what do you understand that to mean?  
 19 A The distance between the two probes should be  
 20 at least 12 inches apart in order for you to achieve  
 21 successful NMI.  
 22 MS. NGUYEN: This will be Exhibit 7.  
 23 (Defense Exhibit No. 7 was marked for  
 24 identification.)  
 25 BY MS. NGUYEN:

Page 87

1 your TASER training?  
 2 A It is.  
 3 Q The next bullet point states "The greater the  
 4 probe spread, the higher likelihood of NMI."  
 5 Is that also something you learned during  
 6 your training?  
 7 A Yes, ma'am.  
 8 Q The next bullet point "CEWs may not achieve  
 9 total NMI."  
 10 Is that also something that you learned?  
 11 A It is.  
 12 Q Next bullet point, "Subject may maintain  
 13 muscle control, particularly in arms and legs,  
 14 depending on many factors, including probe locations."  
 15 Is that also something that you learned  
 16 during your training?  
 17 A It is.  
 18 Q Next bullet point, "Be prepared with other  
 19 force options, including a drive stun follow-up to  
 20 expand NMI in close probe spread situations."  
 21 Is that also something you learned during  
 22 your training?  
 23 A Yes, ma'am.  
 24 Q And then lastly, it states, "Drive stuns  
 25 alone cause only localized pain, not NMI."

Page 89

1 Q Deputy Tripp, Exhibit 7 is the official  
 2 report of autopsy conducted on Mr. McBrayer.  
 3 Do you see that on the front page?  
 4 A Yes, ma'am, I do.  
 5 Q Have you reviewed this document before?  
 6 A No, ma'am, I have not.  
 7 Q Going to page three of Exhibit 7. Based upon  
 8 your training and experience, do you understand that  
 9 the probes -- if there's a -- for a probe deployment,  
 10 that the probes will leave a probe wound on the subject  
 11 that it's deployed on?  
 12 A Yes, ma'am.  
 13 Q And did you learn that in your training?  
 14 A I did.  
 15 Q Have you also experienced that in the field?  
 16 A Yes, I have.  
 17 Q About middle of the page on page three, it  
 18 states "Conductive energy weapons, paren, TASER  
 19 injuries."  
 20 Do you see that?  
 21 A I do.  
 22 Q It goes on to state "On the right anterior  
 23 chest, centered 18 inches below the top of the head and  
 24 2 and one-fourth inches right of the anterior midline,  
 25 is a one-sixteenth by one-sixteenth-inch puncture wound

23 (Pages 86 to 89)



Page 90

1 with a surrounding five-sixteenth by one-fourth-inch  
2 area of superficially abraded/eroded red contusion."

3 Do you see that?

4 A I do.

5 Q Okay. Going to the last sentence of that  
6 paragraph, it states, "This injury is consistent with a  
7 conductive energy weapon, TASER, probe puncture wound."

8 Do you see that there?

9 A I do.

10 Q And then the next paragraph states, "On the  
11 right anterior chest centered 23 inches below the top  
12 of the head and two and three-fourth inches right of  
13 the anterior midline, is a one-sixteenth by  
14 one-sixteenth-inch puncture wound with a surrounding  
15 one-fourth by one-fourth-inch area of superficially  
16 abraded/eroded red contusion."

17 Do you see that there?

18 A I do.

19 Q The last sentence of that paragraph, again,  
20 states, "This injury is consistent with a conductive  
21 energy weapon, TASER, probe puncture wound."

22 Do you see that?

23 A I do.

24 Q So putting those paragraphs together, would  
25 you agree that that's describing the location of the

Page 91

1 puncture wounds remaining from the TASER CEW probes?

2 MR. SPURLIN: Object to the form.

3 THE WITNESS: Yes, ma'am. That's how it  
4 appears.

5 BY MS. NGUYEN:

6 Q Okay. And then it states, one of the probe  
7 wounds is 18 and a half inches below the top of the  
8 head and the other probe wound is 23 inches below the  
9 top of the head.

10 Do you see that?

11 A Yes, ma'am.

12 Q And they are about the same place as -- from  
13 the anterior midline. One is two and one-fourth inches  
14 and one is two and three-fourths inches.

15 Do you see that?

16 A I do.

17 Q So would you agree then the difference  
18 between the 18 and a half inches and 23 inches is 4 and  
19 a half inches between the two puncture wounds?

20 A Yes, ma'am.

21 MR. SPURLIN: Object to the form.

22 BY MS. NGUYEN:

23 Q And so would that also indicate the distance  
24 or the probe spread between the two probes?

25 A Yes.

Page 92

1 MR. SPURLIN: Object to the form.

2 BY MS. NGUYEN:

3 Q That being the 4 and a half inches?

4 A Yes, ma'am.

5 Q And based upon your training and experience  
6 with a 4 and a half inch probe spread, would you expect  
7 to receive that amount?

8 A No, ma'am.

9 MR. SPURLIN: Object to the form.

10 BY MS. NGUYEN:

11 Q And why do you say that?

12 A Because the probes are too close together.  
13 And what I -- what I've been taught about TASER is the  
14 only affected area is between the two probes.

15 Q So you would not expect the muscle lockup  
16 with only the 4 and a half inches between the probes?

17 A No, ma'am.

18 MR. SPURLIN: Object to the form.

19 BY MS. NGUYEN:

20 Q And would that be consistent then with your  
21 observations of Mr. McBrayer's reaction to the TASER  
22 deployment during the incident in question?

23 MR. SPURLIN: Object to the form.

24 THE WITNESS: Yes, ma'am.

25 BY MS. NGUYEN:

Page 93

1 Q Going back to Exhibit 6. That's going to be  
2 the PowerPoint. And it's just the last two pages of  
3 that exhibit is where we left off. And it's numbered  
4 page 90.

5 Are you there?

6 A I am.

7 Q This is titled "Physiological/Metabolic  
8 Effects."

9 Did you learn during your training that there  
10 can be physiological and metabolic effects on a subject  
11 from the TASER CEW deployment?

12 A Yes, ma'am.

13 Q Specifically this slide states "CEWs may  
14 produce effects that could increase the risk of sudden  
15 death, included changes -- including changes in blood  
16 chemistry, blood pressure, respiration, heart rate and  
17 rhythm, adrenaline, and stress hormones."

18 Is that something that you learned during  
19 your TASER training?

20 A Yes, ma'am.

21 MR. SPURLIN: Object to the form.

22 BY MS. NGUYEN:

23 Q On the next page, which is number 94, it's  
24 titled medic -- "Medically Compromised Person."

25 Do you see that?

24 (Pages 90 to 93)

Page 94

Page 95

1 A Yes, ma'am, I do.  
 2 Q It states, "Any law enforcement use of force,  
 3 including a CEW, may cause or contribute to death or  
 4 serious injury."  
 5 Is that something that you learned during  
 6 your training?  
 7 MR. SPURLIN: Object to the form.  
 8 THE WITNESS: Yes, ma'am.  
 9 BY MS. NGUYEN:  
 10 Q The next bullet point states, "Law  
 11 enforcement personnel are called upon to deal with  
 12 individuals in crisis that are often medically  
 13 compromised and who may be susceptible to  
 14 arrest-related death."  
 15 Is that something that you learned during  
 16 your training?  
 17 A It is.  
 18 MR. SPURLIN: Object to the form.  
 19 BY MS. NGUYEN:  
 20 Q And would you agree with that statement that  
 21 you're often called upon to deal with individuals in  
 22 crisis that are often medically compromised?  
 23 A Yes, ma'am, I would agree with that.  
 24 Q The next bullet point. "The subject may  
 25 already be at risk of death or serious injury as a

1 result of preexisting conditions, individual  
 2 susceptibilities, or other factors."  
 3 Is that something that you learned during  
 4 your training?  
 5 A Yes, ma'am.  
 6 MR. SPURLIN: Object to the form.  
 7 BY MS. NGUYEN:  
 8 Q And would you agree that you -- as far as  
 9 preexisting conditions, individual susceptibilities, or  
 10 other factors, that that is not information that you  
 11 were always privy to during your interactions with  
 12 subjects in the field?  
 13 A That is correct.  
 14 MR. SPURLIN: Object to the form.  
 15 BY MS. NGUYEN:  
 16 Q And, in fact, with regard to the incident  
 17 with Mr. McBrayer, did you have any knowledge about his  
 18 medical condition at the time?  
 19 A No, ma'am, I did not.  
 20 Q Did you have any knowledge as to whether he  
 21 was on drugs at the time?  
 22 A No, ma'am.  
 23 Q Did you have any knowledge as to his mental  
 24 health status at the time?  
 25 A No, ma'am.

Page 96

Page 97

1 Q And so would you agree that this is talking  
 2 about those medical conditions that you are made aware  
 3 of?  
 4 MR. SPURLIN: Object to the form.  
 5 THE WITNESS: Yes, ma'am.  
 6 MS. NGUYEN: This will be Exhibit 8.  
 7 (Defense Exhibit No. 8 was marked for  
 8 identification.)  
 9 BY MS. NGUYEN:  
 10 Q Okay. I'm showing you Exhibit 8. Take a  
 11 moment just to review that.  
 12 A Okay.  
 13 Q Deputy Tripp, have you had a moment to  
 14 familiarize yourself with Exhibit 8?  
 15 A Yes, ma'am.  
 16 Q And do you recognize the exhibit?  
 17 A I do.  
 18 Q And what do you recognize it as?  
 19 A These are the TASER warnings that are part of  
 20 the class before you do the practical application  
 21 course.  
 22 Q And kind of two -- or excuse me -- one-third  
 23 of the way down, the paragraph starts, "These warnings  
 24 and instructions are effective October 30th, 2018."  
 25 Do you see that?

1 A I do.  
 2 Q So do you recall these being the warnings  
 3 that you reviewed during your TASER training in  
 4 December of 2018?  
 5 A Yes, ma'am.  
 6 Q Down at the bottom of the page, there's two  
 7 footnotes. I'm going to direct your attention to  
 8 footnote two.  
 9 Do you see that?  
 10 A I do.  
 11 Q It states, "Law enforcement agencies are  
 12 force experts and are solely responsible for their own  
 13 guidance. Guidance includes policy, custom, procedure,  
 14 rule, order, directive, training, continuum and  
 15 standard. Axon has no authority to mandate guidance,  
 16 set policy, require training, or establish standards of  
 17 care or conduct."  
 18 Is that something that you reviewed during  
 19 your TASER training in December of 2018?  
 20 A It is.  
 21 Q Then on page one, it's the second paragraph,  
 22 the first sentence states, "When used as directed in  
 23 probe deployment mode, CEWs are designed to temporarily  
 24 incapacitate a person from a safer distance than some  
 25 other force options, while reducing the likelihood of

25 (Pages 94 to 97)

Page 98

1 death or serious injury. However, any use of force,  
2 including the use of a CEW, involves risks that a  
3 person may get hurt or die due to the effects of the  
4 CEW. Physical incapacitation, physical exertion,  
5 unforeseen circumstances, or individual  
6 susceptibilities."

7 Is that something that you reviewed during  
8 your TASER training in December of 2018?

9 A Yes, ma'am, it is.

10 Q And are those, in fact, things that you were  
11 aware of, that CEWs, while reducing the likelihood of  
12 death or serious injury, they still involve that risk?

13 A Yes, ma'am.

14 Q On page --

15 MR. WILLIAMS: If I may, I just want to  
16 interject here for a second just to clarify for  
17 the record. I'm not sure that this is the version  
18 -- because the version that was produced with part  
19 of our discovery on their training, the materials  
20 are dated March 2013, when he had his training, as  
21 I understand it.

22 I don't know if there's any difference.

23 Reading it so far, I don't see any difference.

24 But just to note that this may be different from  
25 what he actually received.

Page 99

1 MS. NGUYEN: You know, I -- I noticed that,  
2 but --

3 We can -- we can go off the record.

4 THE VIDEOGRAPHER: Stand by.

5 The time is 12:14. We're going off the  
6 record.

7 (Whereupon, a recess was taken.)

8 THE VIDEOGRAPHER: The time is 12:15. We're  
9 back on the record.

10 MR. SPURLIN: This is Johnny Spurlin. Let me  
11 say something on the record. And I am not  
12 accusing Mr. Williams of doing anything  
13 inappropriate, but he handed another set of TASER  
14 warnings and said he thought the 2013 were the  
15 ones he was actually trained on. And an  
16 off-the-record discussion occurred suggesting that  
17 they were similar so far in the comparison.

18 My only point is Deputy Tripp had sworn under  
19 oath that Exhibit No. 8 is the one that he was  
20 trained on. So to the extent that we're trying to  
21 provide assistance, I think that's inappropriate.  
22 I mean, he can swear to what he can swear to.

23 MS. NGUYEN: All right. Ready to --

24 MR. WILLIAMS: Yeah. I just noted to counsel  
25 that they looked the same. That's why I'm saying

Page 100

1 so far they looked and appeared the same. So it  
2 certainly could appear that way to the witness.

3 But I think the training records that we have  
4 that were actually in his file would be the better  
5 source of the accuracy of that. But that's --

6 MS. NGUYEN: Yeah. Either way, the comments  
7 of counsel are really irrelevant and aren't part  
8 of the record and so I'm going to, as I stated off  
9 the record, clarify it with the witness.

10 MR. WILLIAMS: Fine with me.

11 MR. SPURLIN: Well, my comments are not  
12 irrelevant. My comments are made to put on the  
13 record what may be inappropriate discussions to  
14 coach the witness into changing his testimony.

15 He's already sworn under oath that the  
16 exhibit you handed him was the one he used in  
17 training. Any communications to suggest another  
18 answer to him that maybe that's not accurate, he  
19 had a different set, is improper.

20 And what I said is not irrelevant. It's made  
21 to perfect what occurred. That's the intent of my  
22 comments. And that's the reason you have a record  
23 is so the judge will know what was done.

24 MS. NGUYEN: And although I had --

25 MR. SPURLIN: Did I state inaccurately -- did

Page 101

1 I state anything inaccurately about what happened,  
2 Mr. Williams?

3 MR. WILLIAMS: That's perfectly fine. It  
4 will all sort out. It's not a big deal.

5 MS. NGUYEN: We're going to sort it out  
6 through the deputy's testimony.

7 MR. WILLIAMS: Sure.

8 MS. NGUYEN: But I will say that counsel  
9 simply is pointing out that there was another  
10 warnings document produced that has a date of  
11 March 1, 2013 and that thus far what I have  
12 reviewed appears to be the same in both documents.

13 BY MS. NGUYEN:

14 Q Okay. So I think where we left off, we're  
15 still on Exhibit 8, we are on page two. And it's the  
16 paragraph titled "Physiologic and Metabolic Effects."

17 Do you see that?

18 A I do.

19 Q Okay. And it says there, "CEW causes  
20 physiologic and/or metabolic effects that may increase  
21 the risk of death or serious injury."

22 Is that something that you learned during  
23 your December 2018 training?

24 A Yes, ma'am, it is.

25 Q Going on to the next paragraph, it states

26 (Pages 98 to 101)

Page 102

1 "Some individuals may be particularly susceptible to  
2 the effects of CEW use. These susceptible individuals  
3 include those with heart conditions, asthma, or other  
4 pulmonary conditions, and people suffering from excited  
5 delirium, profound agitation, severe exhaustion, drug  
6 intoxication, or chronic drug abuse, and/or  
7 overexertion from physical struggle."

8 Do you see that?

9 A I do.

10 Q And is that something that you learned in  
11 conjunction with your December 2018 TASER training?

12 A Yes, ma'am.

13 Q It goes on to state, "In a physiologically or  
14 metabolic -- metabolically compromised person, any  
15 physiologic or metabolic change may cause or contribute  
16 to sudden death."

17 Is that also something that you learned  
18 during your December 2018 training?

19 A Yes, ma'am, it is.

20 Q Now, with regard to this list of conditions  
21 for particularly susceptible individuals, it first  
22 states it can include those with heart conditions,  
23 asthma, or pulmonary conditions, and people suffering  
24 from excited delirium."

25 Do you see that?

Page 103

1 A I do.

2 Q You previously testified that you didn't know  
3 what excited delirium is; is that correct?

4 A That is correct.

5 Q Is that still accurate as you sit here today?

6 A It is.

7 Q Do you know whether that's -- excited  
8 delirium is even a formal medical diagnosis?

9 A I'm not sure. I can't speak on that.

10 Q Do you know whether it's recognized by  
11 American Medical Association?

12 A Again, I can't speak on that.

13 Q American Psychiatric Association?

14 A No, ma'am.

15 Q World Health Organization?

16 A I'm not sure.

17 Q Okay. Deputy Spurgeon testified that Major  
18 Torres discussed excited delirium in his TASER  
19 training, which also took place in December of 2018.

20 My question to you is do you recall the same,  
21 that is, Major Torres discussing excited delirium  
22 during the training?

23 MR. SPURLIN: Object to the form.

24 THE WITNESS: It was December of 2018. I  
25 don't remember if that was specifically discussed.

Page 104

1 BY MS. NGUYEN:

2 Q Is it possible that it was discussed but you  
3 just don't remember it as you sit here today?

4 A It is possible.

5 Q The next thing listed here is -- after  
6 excited delirium, profound agitation.

7 Do you see that?

8 A I do.

9 Q And you already testified in this case that  
10 Mr. McBrayer was very agitated, correct?

11 A Yes, ma'am.

12 Q The next thing is severe exhaustion.

13 Do you know whether Mr. McBrayer was severely  
14 exhausted?

15 A I can't attest to whether he was or wasn't.

16 Q Did you -- you don't know what he was doing  
17 prior to your interaction with him, right?

18 A No, ma'am.

19 Q Do you know whether he had been running  
20 before you came into contact with him?

21 A I don't know.

22 Q Drug intoxication. You testified that you  
23 did suspect he may be on drugs, right?

24 A Yes, ma'am.

25 Q But did you have any information confirming

Page 105

1 that he was in fact on drugs?

2 A No, ma'am, I did not.

3 Q All right. I believe I recall testimony or  
4 prior testimony that at some point you noticed that  
5 Mr. McBrayer was foaming at the mouth.

6 Do you recall that?

7 A Yes, ma'am, I recall saying that.

8 Q And do you recall when it was that you  
9 observed the foaming at the mouth?

10 A I don't remember.

11 Q Do you -- what did you -- at the time  
12 whenever you observed that during your interaction with  
13 Mr. McBrayer, did that indicate anything to you?

14 A I would say, no, it didn't really indicate.  
15 I mean, it -- that is what caused me -- that's one of  
16 the contributing factors that caused me to suspect that  
17 he may be on drugs.

18 But I'm not a drug professional. I'm not a  
19 medical professional. I don't know what would cause  
20 somebody to foam at the mouth.

21 Q Based upon your training and experience, had  
22 you ever learned that people on drugs can foam at the  
23 mouth?

24 A Yes, ma'am. I mean, I've seen it before.

25 Q You said you've seen it before based upon

27 (Pages 102 to 105)

Page 106

1 your experience as a law enforcement officer?

2 A Yes, ma'am.

3 Q The next thing listed, chronic drug abuse.

4 Did you know anything about Mr. McBrayer's  
5 history of drug use?

6 A No, ma'am.

7 Q Overexertion from physical struggle.

8 Well, you knew Mr. McBrayer was obviously in  
9 a physical struggle with you and Deputy Spurgeon,  
10 correct?

11 A Yes, ma'am.

12 Q Did you have any information whether he was  
13 experiencing overexertion from that physical struggle?

14 A No, ma'am.

15 Q Knowing everything that we've reviewed that  
16 you had learned during your December 2018 training, so  
17 including in the PowerPoint, as well as the warnings,  
18 knowing that information and the risks associated with  
19 using TASER CEWs, once Mr. McBrayer chose to attack  
20 you, did you have any option but to use force?

21 MR. SPURLIN: Object to the form.

22 THE WITNESS: No, ma'am.

23 BY MS. NGUYEN:

24 Q And why do you say that?

25 A I mean, I say that because, I mean,

Page 107

1 Mr. McBrayer was advancing towards me in what I  
2 believed was an attempt to assault me. So I -- at some  
3 point, I would have had to defend myself.

4 Q Did you have time to stop and ask him  
5 questions about his medical or mental health condition?

6 A No, ma'am.

7 Q Did you have time to ask him if he was on  
8 drugs?

9 A No, ma'am.

10 Q If he was mentally unstable?

11 A No, ma'am.

12 Q If he had an elevated temperature?

13 A No, ma'am.

14 Q Elevated heart rate?

15 A No, ma'am.

16 Q And whether his adrenaline was high?

17 A No, ma'am.

18 Q Whether he was exhausted or overexerted?

19 A No, ma'am.

20 Q Would you agree that you only had time to  
21 defend yourself with the tools that you had?

22 MR. SPURLIN: Object to the form.

23 THE WITNESS: Yes, ma'am.

24 BY MS. NGUYEN:

25 Q And what tools did you have on your belt that

Page 108

1 day when you came into contact with Mr. McBrayer?

2 A I had my TASER, my OC spray, and my duty  
3 weapon, my firearm.

4 Q Did you have a baton?

5 A No, ma'am.

6 Q OC spray. Based upon your training -- I  
7 assume you've been trained on the use of OC spray?

8 A Yes, ma'am.

9 Q And what have you learned about OC spray and  
10 its effectiveness on the subject?

11 A Typically OC spray is -- I mean, it's  
12 effective at preventing someone from being able to see,  
13 but it's not going to neutralize somebody's actions.

14 It's not going to stop them from -- typically when you  
15 spray somebody, they run around. And it doesn't stop  
16 them and gain compliance.

17 Q Can OC spray also affect others  
18 unintentionally?

19 A Yes, ma'am.

20 Q Would that --

21 A And it typically does.

22 Q Would that include yourself?

23 A Yes, ma'am.

24 Q Firearm, would a firearm -- would a firearm  
25 have been appropriate to use during your interaction

Page 109

1 with Mr. McBrayer?

2 A I believe, yes.

3 Q And why did you choose to use a TASER CEW  
4 rather than a firearm?

5 A Because my intent was to use a less lethal  
6 means, not to take Mr. McBrayer's life.

7 Q And does your department classify a TASER CEW  
8 as less lethal as opposed to lethal use of force?

9 A Yes, ma'am, they do.

10 Q And then lastly, were you able to go -- is  
11 hands on considered to be a use of force?

12 A It is.

13 Q And based upon your training and experience,  
14 going hands on, does that create injury to either  
15 yourself or the subject?

16 MR. SPURLIN: Object to the form.

17 THE WITNESS: It can, yes.

18 BY MS. NGUYEN:

19 Q And in this instance, why did you choose to  
20 use the TASER CEW as opposed to going hands on  
21 immediately with Mr. McBrayer?

22 A Number one, I don't know what Mr. McBrayer --  
23 Mr. McBrayer's training or experience level is. So  
24 it's commonly my practice not to -- not to try to get  
25 into a physical confrontation with someone who I don't

28 (Pages 106 to 109)



Page 110

1 know, you know, his stamina, I don't know his  
2 experience, his training. So inherently it's more  
3 dangerous for both of us to get into a physical  
4 altercation than it is for me to deploy the CEW.

5 Q And with regard to hands on, does that  
6 require you to get in close proximity to the subject?

7 A Yes.

8 Q Does the use of a TASER CEW require you to  
9 get in -- to close proximity with the subject?

10 A No, it does not.

11 Q Once Mr. McBrayer was finally detained, I  
12 understand from your past testimony that he was placed  
13 in a patrol vehicle; is that right?

14 A That is correct.

15 Q And why was he placed in the vehicle?

16 A Because at that point, we hadn't had the  
17 ability to do any investigation on what we were called  
18 out there for. And with Mr. McBrayer's -- with  
19 everything that went on -- and we were still unclear  
20 whether he was going to be pending charges at that time  
21 or not -- we detained him and placed him into the  
22 vehicle.

23 Q Up until that point of being placed in the  
24 vehicle, was Mr. McBrayer talking?

25 A Yes.

Page 111

1 Q Was he moving?

2 A He was.

3 Q Was he breathing, to your knowledge?

4 A He was.

5 Q So during the entire interaction with  
6 Mr. McBrayer, up until the time that he was placed in  
7 the vehicle, did you observe anything that made you  
8 believe he was in medical distress?

9 A No, ma'am.

10 Q Is it Tift County Sheriff's Office policy to  
11 obtain medical assistance whenever needed or requested?

12 A Yes, ma'am.

13 Q And did you do that here?

14 A I personally did not. Deputy Spurgeon was  
15 the one that called for EMS.

16 Q And I watched the video, and it appeared that  
17 while Deputy Spurgeon was calling for EMS, that you  
18 were assisting him with holding the radio button down.

19 Is that -- was that you?

20 A Yes, ma'am.

21 Q Okay. So that was -- he was -- his hands  
22 were on Mr. McBrayer and you were reaching over and  
23 pushing the button for him to speak on his radio?

24 A Yes, ma'am. That way we didn't lose control  
25 of that arm that we were able to get control of.

Page 112

1 Q And do you recall during that time him  
2 specifically requesting EMS?

3 A Yes, ma'am.

4 Q Do you recall at that time discussion of EMS  
5 saying that they were staged until they received the  
6 clear to come in?

7 A I don't recall that, no.

8 Q Did you ask any other officers to check on  
9 Mr. McBrayer while he was in the car?

10 A I did.

11 Q And who did you ask?

12 A Deputy Hancock.

13 Q And what did you ask Deputy Hancock to do?

14 A I asked him to make sure that he was  
15 breathing and had a pulse.

16 Q And to your knowledge, did he do that?

17 A Yes, ma'am.

18 Q Did Deputy Hancock tell you when he checked  
19 on him, the results? You know, if he went and checked  
20 on him, what he found?

21 A I don't remember exactly how he worded it. I  
22 would have to refer you to the video on that. But he  
23 indicated that Mr. McBrayer was okay. He had a pulse  
24 and was breathing.

25 Q Do you know how many times Deputy Hancock

Page 113

1 checked on him?

2 A No, ma'am, I don't.

3 Q Did you also check on Mr. McBrayer while he  
4 was in the vehicle?

5 A I did.

6 Q And what did you -- what did you do to check  
7 on him?

8 A I checked Mr. McBrayer's carotid artery for a  
9 pulse, at which point I felt what I believed to be a  
10 pulse.

11 Q During that check, was there anything that  
12 you observed that made you believe that he was in  
13 serious medical distress?

14 A No, ma'am.

15 Q At some point, EMS alerts you to the fact  
16 that they're concerned about Mr. McBrayer's condition?

17 A Yes, ma'am.

18 Q Is that fair enough?

19 A (Nodding head affirmatively.)

20 Q What was your reaction to when they said  
21 that, to hearing that?

22 A Can you -- can you reword that?

23 Q Yeah.

24 A I'm not sure I understand what you're asking  
25 me.

29 (Pages 110 to 113)

Page 114

1 Q Yeah. First of all, let me ask you, was that  
2 the first time that you heard that there was something  
3 going on, something's wrong possibly with Mr. McBrayer?  
4 A Yes, ma'am.  
5 Q That would have been when EMS personnel let  
6 you know that?  
7 A Yes, ma'am.  
8 Q Were you surprised to hear that?  
9 A I was.  
10 Q Why?  
11 A Because we had checked on him several times.  
12 You know, there was no indication that he was in any  
13 kind of medical distress as far as I -- as far as I  
14 knew. So for them to say that, you know, he didn't  
15 have a pulse, or however they worded it -- I don't  
16 recall how they worded it -- it was completely  
17 unexpected.  
18 Q According to the video, the -- there was ten  
19 minutes and 20 seconds between the time of your first  
20 TASER CEW deployment to the time that Mr. McBrayer was  
21 placed in the vehicle.  
22 Does that sound about right to you?  
23 A I can't really attest to the time frame.  
24 Q Okay.  
25 A I don't know.

Page 116

1 MS. NGUYEN: Yeah. Sorry.  
2 MR. WILLIAMS: Sorry.  
3 THE VIDEOGRAPHER: The time is 12:39. We're  
4 going off the record.  
5 (Whereupon, a recess was taken.)  
6 THE VIDEOGRAPHER: The time is 12:45. We're  
7 back on the record.  
8 BY MS. NGUYEN:  
9 Q Deputy Tripp, you should have in front of you  
10 Exhibit 9.  
11 Do you see that?  
12 A I don't believe I got a copy of it.  
13 MR. WILLIAMS: Did somebody just give it to  
14 him?  
15 MS. NGUYEN: I'm actually going to pull  
16 out -- did we give -- did you mark one?  
17 THE COURT REPORTER: I didn't.  
18 MR. WILLIAMS: I was going to say, did  
19 somebody actually give it to him?  
20 MS. NGUYEN: Here's an extra one. Here you  
21 go. Okay.  
22 (Defense Exhibit No. 9 was marked for  
23 identification.)  
24 BY MS. NGUYEN:  
25 Q Now you have Exhibit 9.

Page 115

1 I mean, if that's what the video states, then  
2 I have no reason to dispute what the video says.  
3 Q Okay. We'll go ahead and take five minutes.  
4 I'm just going to review my outline and make sure I  
5 don't have anymore questions for you.  
6 A Thank you.  
7 THE VIDEOGRAPHER: The time is 12:33. We're  
8 going off the record.  
9 (Whereupon, a recess was taken.)  
10 THE VIDEOGRAPHER: The time is 12:39. We're  
11 back on the record.  
12 BY MS. NGUYEN:  
13 Q Deputy Tripp, just a couple more things I  
14 failed to go over with you thus far.  
15 First, on your X26P that you used on  
16 Mr. McBrayer, did it have an automatic stop after five  
17 seconds?  
18 A Yes, ma'am.  
19 MS. NGUYEN: I'm going to have to use that as  
20 an exhibit.  
21 MR. WILLIAMS: Let me make copies of that  
22 first. I should have done that, because I  
23 actually have annotated this one. I'll copy it.  
24 THE VIDEOGRAPHER: Should we go off the  
25 record?

Page 117

1 A Yes, ma'am.  
2 Q I'm also going to have you pull out Exhibit 8  
3 that we just reviewed.  
4 Okay. So Exhibit 9 are also the TASER  
5 warnings; would you agree with that?  
6 A Yes, ma'am.  
7 Q But if you go about one-third, maybe almost  
8 halfway down the page, the date states "These warnings  
9 and instructions are effective March 1, 2013."  
10 Do you see that?  
11 A Yes, I do.  
12 Q Whereas, on Exhibit 8 that we just reviewed,  
13 that one has the effective date of October 30th, 2018?  
14 A Correct.  
15 Q Okay. So I want you to take a moment and  
16 just kind of go through each page together, so looking  
17 at page one of both exhibits. And I'm not going to ask  
18 you anything specific right now, but just kind of  
19 generally go through them.  
20 And I'm going to ask you if they look  
21 similar. I'm not going to ask you if there's like  
22 small differences, but generally would you agree that  
23 Exhibit 8 and Exhibit 9 look similar?  
24 A Yes, I would agree they look similar.  
25 Q Okay. So as you sit here today, are you able

30 (Pages 114 to 117)

Page 118

1 to say whether the warnings that you reviewed in  
2 relation to your December 2018 TASER training were the  
3 warnings dated March 1, 2013 or the warnings dated  
4 October 30th, 2018?

5 A I don't recall which ones they were.

6 Q Okay. So you -- you wouldn't have paid  
7 attention to the specific effective date on the  
8 warnings that you reviewed?

9 A I may have three years -- almost three years  
10 ago. But today, I couldn't tell you --

11 Q Okay.

12 A -- what the date was on that paper.

13 Q But you're confident that you did in fact  
14 review warnings prior your TASER training in December  
15 of 2018?

16 A Yes, ma'am, I'm positive.

17 Q Okay. And as to the portions that we  
18 reviewed, I'm just going to go over those in Exhibit 9,  
19 because we did review portions of Exhibit 8, so I want  
20 to make sure those are the same in Exhibit 9.

21 A Yes, ma'am.

22 Q Understand?

23 A I do.

24 MR. WILLIAMS: I'll stipulate to that so we  
25 can save time. I don't -- I mean, there's no --

Page 119

1 they are the same. I can stipulate to that.

2 MS. NGUYEN: The portions that I --

3 MR. WILLIAMS: Yeah, the portions you  
4 discussed.

5 MS. NGUYEN: I'm going to be quick. I'm not  
6 going over it in detail.

7 MR. WILLIAMS: Okay. I was going to say  
8 we --

9 MS. NGUYEN: I appreciate that, but I'd  
10 rather just have it on the record real quick.

11 BY MS. NGUYEN:

12 Q Okay. So on Exhibit 9, first it has the same  
13 picture of "Warning" at the top where it says,  
14 conducted energy weapons "can cause death or serious  
15 injury."

16 Do you see that?

17 A Yes. It says, "Conducted electrical  
18 weapons," yes.

19 Q Right.

20 That's the difference, conducted energy  
21 weapons versus conducted electrical weapons, right?

22 A Correct.

23 Q But the warning is still the same, "Can cause  
24 death or serious injury," right?

25 A Correct.

Page 120

1 Q Footnote two that we reviewed regarding law  
2 enforcement agencies setting their own guidance, would  
3 you agree that's the same on Exhibit 8 and Exhibit 9?

4 A Where is that one at again? I'm sorry.

5 Q Footnote two at the bottom of the page.

6 A Oh, okay. I'm sorry.

7 Q That's okay.

8 A Yes. Notably it just -- there's a difference  
9 between TASER and Axon.

10 Q Right.

11 A But the warning is still the same, yes.

12 Q Okay. And then we also reviewed the second  
13 paragraph of page -- on page one.

14 Would you agree that that second paragraph is  
15 the same on both Exhibit 8 and 9?

16 A I do, yes.

17 Q Okay. And then the last thing we reviewed is  
18 on page two. We reviewed the first paragraph  
19 "Physiologic and Metabolic Effects," and then the next  
20 paragraph which talks about particularly susceptible  
21 individuals?

22 A Yes.

23 Q Would you agree that those two paragraph are  
24 the same between Exhibit 8 and Exhibit 9?

25 A I do, yes.

Page 121

1 MS. NGUYEN: That's all the questions I have.

2 MR. WILLIAMS: All right.

3 MR. SPURLIN: Do you all want to take a  
4 break?

5 MR. WILLIAMS: Let's take a lunch break.

6 THE VIDEOGRAPHER: There's no follow-up  
7 questions?

8 MR. WILLIAMS: There's going to be, but we're  
9 going to take a lunch break first.

10 MR. SPURLIN: There's going to be.

11 THE VIDEOGRAPHER: We're coming back on the  
12 record?

13 MR. WILLIAMS: Yes.

14 THE VIDEOGRAPHER: This is the medium number  
15 two in the deposition of Deputy Anthony Tripp.  
16 The time is 12:52. We're going off the record.  
17 (Whereupon, a recess was taken.)

18 THE VIDEOGRAPHER: This is the beginning of  
19 medium number three in the deposition of Deputy  
20 Anthony Tripp. The time is 1:44 p.m. We are on  
21 the record.

22 EXAMINATION

23 BY MR. SPURLIN:

24 Q All right, Mr -- Deputy Tripp. My name is  
25 Johnny Spurlin. I'm one of the attorneys who

31 (Pages 118 to 121)

Page 122

1 represents the plaintiffs, and I've got quite a few  
2 questions. Sorry to keep you so long, but --

3 A Yes, sir.

4 Q -- but I need to fill in quite a few  
5 blanks --

6 A Yes, sir.

7 Q -- in what was said.

8 You previously answered some written  
9 questions through your counsel in this case, and they  
10 were kind enough to send me a verification that you  
11 were swearing to those answers.

12 You intended to give sworn answers to those  
13 written questions, did you not?

14 A Yes, sir.

15 Q Okay. And in preparation for today's  
16 deposition, did you look at any documents?

17 Nothing wrong with it. I just want to know  
18 what you looked at.

19 A I mean, I did. I reviewed my report.

20 Q Okay. You reviewed the incident report that  
21 you were asked to see earlier; is that correct?

22 A Yes, sir.

23 Q Plaintiffs -- I mean, Defendants' Exhibit No.  
24 1, right?

25 A Yes, sir.

Page 123

1 Q Did you look at any other documents?

2 A I did. I was able to review the previous  
3 deposition.

4 Q Okay. And is that the first time you had  
5 reviewed your previous deposition?

6 A Yes, sir.

7 Q Okay. Did you read and sign that previous  
8 deposition? Do you know what that means?

9 A I don't --

10 Q I'll help you.

11 Your counsel had indicated before we started  
12 this deposition that you wanted to read and sign the  
13 deposition. What that means is you can get a copy and  
14 have 30 days to read it. And if you want to attach an  
15 explanation to it on the back, you can say on page 24  
16 where I gave this testimony, I should have added this.  
17 I should have said it like that.

18 My question to you is -- I wasn't involved in  
19 the other case where you were deposed.

20 A Right.

21 Q Did you read and sign it in that case as  
22 well?

23 A I'm not sure.

24 Q And do you remember attaching any  
25 explanations on an errata sheet to that deposition?

Page 124

1 A No, sir.

2 Q Okay. All right. So you made no attempt to  
3 correct anything in that deposition at the time it  
4 was -- it was done, correct?

5 A Not that I -- not that I recall, no, sir.

6 Q But today you wanted to correct one thing  
7 that you said about not having your flashlight,  
8 correct?

9 A Yes, sir.

10 Q Okay. And having now seen the video or the  
11 body camera footage, you are clear that you in fact did  
12 have your flashlight out when you approached  
13 Mr. McBrayer the first time, correct?

14 A Yes, sir.

15 Q Okay. So that testimony was not correct in  
16 that first deposition, correct?

17 A Accurate. That was not correct.

18 Q All right. And was there anything else that  
19 you noticed when you reviewed the deposition yesterday  
20 that you wanted to correct from your first deposition?

21 A Yes, sir. There were a couple of things. I  
22 know that previously I indicated that when Mr. McBrayer  
23 and -- when the incident occurred with Deputy Spurgeon,  
24 myself and Mr. McBrayer, Mr. McBrayer went to the  
25 ground. And the question was asked whether he was on

Page 125

1 his stomach or his back. And I indicated in my  
2 previous deposition that he was on his stomach.

3 That was in fact inaccurate. After watching  
4 the video, I did determine that initially he was on his  
5 back and then he was rolled over to his stomach.

6 Q Thank you.

7 Anything else you noted when you reviewed the  
8 prior deposition that you would like to correct?

9 A Yes, sir. The -- the question was asked --  
10 initially the question was asked if I placed my knee on  
11 to Mr. McBrayer's neck. And my -- my answer was no.  
12 And my answer is still no to that.

13 However, what I did notice in the video was  
14 that initially I placed my knee onto Mr. McBrayer's  
15 shoulder area. And it did at some point slide towards  
16 his neck. However, it was removed as soon as it was  
17 identified that it was around the base of his neck.

18 Q In fact, on the body cam, Deputy Spurgeon  
19 tells you --

20 A Yes, sir.

21 Q -- to remove it, does he not?

22 A He does. Yes, sir.

23 Q And he specifically said the reason you need  
24 to remove it is so that we don't interfere with his  
25 breathing, correct?

32 (Pages 122 to 125)

Page 126

1 A Yes, sir.  
 2 MR. WILLIAMS: I object to the form.  
 3 BY MR. SPURLIN:  
 4 Q Did I accurately relay what he said to you on  
 5 that the body camera?  
 6 A I would have to listen to the body cam  
 7 footage, sir.  
 8 Q Okay. But he said something to you? He's  
 9 the one that alerted you to move your knee, correct?  
 10 A He is the one that alerted me to move it,  
 11 yes.  
 12 Q All right. You've identified the flashlight,  
 13 whether he was initially on his stomach, and whether  
 14 your knee ever was on the shoulder or neck area.  
 15 Anything else you need to correct that you've  
 16 reviewed in the deposition?  
 17 A Yes, sir. The last thing notably that I can  
 18 recall at this point in time is the question was asked  
 19 whether my hand was on his neck. I did indicate  
 20 earlier that it was in fact on his neck. And I also  
 21 gave my explanation of why.  
 22 Q All right. Let me -- let me see if I  
 23 understand what you said.  
 24 Today you said your hand was on his neck?  
 25 A Yes, sir.

Page 128

1 that you want to correct today?  
 2 A That I want to correct at this point in time,  
 3 yes.  
 4 Q All right. Now, did you also review the body  
 5 camera footage in preparation for today's --  
 6 A Yes.  
 7 Q -- deposition?  
 8 A Yes, sir, I did.  
 9 Q Did you review the Tripp body camera footage?  
 10 A Yes, sir, I did.  
 11 Q Did you review anyone else's body camera  
 12 footage?  
 13 A I believe that we looked at Deputy  
 14 Spurgeon's.  
 15 Q Okay. Did you look at anyone else's?  
 16 A Not that I recall.  
 17 Q Okay.  
 18 A I don't remember.  
 19 Q You -- have you ever seen Deputy Henderson or  
 20 Deputy Hancock's body camera footage?  
 21 A We may have taken it. I don't know if we  
 22 took a look at that yesterday or not.  
 23 Q Have you ever reviewed Deputy Calderon's  
 24 footage?  
 25 A No, sir, I haven't seen Deputy Calderon's

Page 127

1 Q In the first deposition, you denied that your  
 2 hand was on his neck; is that correct?  
 3 A Yes, sir. I told you that my recollection  
 4 was that it was not.  
 5 Q Okay. And do you remember where in the  
 6 deposition it was given the first time you said your  
 7 hand was?  
 8 You said, I said in the deposition it was not  
 9 on his neck.  
 10 A Oh, no, I --  
 11 Q When did you say it was?  
 12 A I previously stated today that it was.  
 13 Q I got that.  
 14 A Yes, sir.  
 15 Q Is that a -- is that a correction for what --  
 16 from what you said in the first deposition?  
 17 A Yes, sir.  
 18 Q So in the first deposition when asked if your  
 19 hand was on the neck, you said no?  
 20 A I said it was not.  
 21 Q Okay. In the first deposition, where did you  
 22 say your hand was?  
 23 A I don't recall that.  
 24 Q Okay. All right. Are those the only four  
 25 things that you identified in your previous deposition

Page 129

1 footage.  
 2 Q Okay. Now, is there anything you observed in  
 3 reviewing the body camera footage of you and the body  
 4 camera footage of Spurgeon that you would like to  
 5 correct testimony given in the first deposition? It  
 6 may be the same four things.  
 7 MR. WILLIAMS: You mean other than what he's  
 8 already discussed?  
 9 MR. SPURLIN: Yes.  
 10 BY MR. SPURLIN:  
 11 Q Because you specifically looked at the body  
 12 camera footage?  
 13 A Yes, sir. I think -- at this point in time,  
 14 I think those are the only notable things that I  
 15 recall. However, I mean, as we go through this, there  
 16 may be another thing or two that I recall.  
 17 Q All right.  
 18 A But at this point, I think that that's all  
 19 that I remember.  
 20 Q Were there any cameras on any vehicles that  
 21 were activated that night?  
 22 A I can't attest to that. What I can tell you  
 23 is my vehicle was not equipped with a dash camera.  
 24 Q Okay. Do you know if Spurgeon's was?  
 25 A I don't know.

33 (Pages 126 to 129)



Page 130

1 Q Okay. Have you ever reviewed any footage  
2 from a vehicle camera?

3 A No, sir.

4 Q Okay. All right. Tell me when your body  
5 camera footage is activated. Is it manually?

6 A Yes, sir, it's manually.

7 Q Okay. Do you recall when you manually turned  
8 on your camera that night?

9 A I don't, no, sir. What I can tell you is it  
10 backs up 30 seconds. So whenever it picked up, 30  
11 seconds after that is when I actually activated it. So  
12 30 seconds from what you start seeing in the video, 30  
13 seconds after that is when I activated the camera. It  
14 backs up 30 seconds.

15 Q Thank you. Let me repeat what you said and  
16 see if I understand it.

17 The camera is always taking footage, it just  
18 may not record it unless you activate it; is that true?

19 A That is my understanding, yes.

20 Q So as you get out of the vehicle, even if you  
21 haven't activated it, it is recording? And as long as  
22 I activate within 30 seconds, what it sees and observes  
23 through the cameras for the previous 30 seconds will  
24 now be recorded and kept?

25 A That is correct.

Page 131

1 Q Okay. So if the camera -- I'm just making  
2 the numbers up. If the camera starts and it has 00:1,  
3 you would have activated it at 00:30?

4 A Correct.

5 Q Got you. Okay.

6 Do you remember in this case when you  
7 activated your body camera?

8 A No, sir, I don't.

9 Q Do you know why you activated your body  
10 camera?

11 A I activated my body camera because I was out  
12 at a call, which is typical for our policy.

13 Q Okay. Was it when you got out of the  
14 vehicle?

15 A No, sir. It wouldn't have been when I got  
16 out of the vehicle.

17 Q Would it have been after you observed  
18 McBryer?

19 A Yes, sir.

20 Q Okay. Was it anything in particular he did  
21 that made you activate your body camera?

22 A I don't think necessarily anything he did,  
23 sir. I think that the events -- the events up to the  
24 point where I activated my body camera affected the  
25 time frame.

Page 132

1 Q I understand.

2 I'm just asking you from your memory.

3 A Yes, sir.

4 Q Do you remember him doing something and you  
5 said, oh, I think that's a crime and then you turn on  
6 your camera?

7 A No, sir.

8 Q You can't remember any specific event that  
9 caused you to turn on the camera?

10 A No, sir.

11 Q Got you. All right.

12 Now, I'm going to ask you a question about  
13 the TASER itself because I'm not a TASER guy. You were  
14 asked a question about what safe mode is.

15 Is that where the safety is on?

16 A Yes, sir.

17 Q Okay. And then you were asked a question by  
18 Ms. Nguyen about what is armed.

19 Is that once you take the safety off?

20 A That is my understanding for armed, yes.

21 Q Got you.

22 And then that just means like a gun, it's  
23 ready to shoot but you may or may not apply the trigger  
24 and shoot, correct?

25 A Correct.

Page 133

1 Q And then the third number or phrase she asked  
2 you about was triggered. And that would be when you  
3 actually aim it at somebody and apply the trigger to  
4 shoot, correct?

5 A That would be my understanding, yes.

6 Q Got you. All right.

7 And is there any policy or procedure that  
8 you've been taught by anyone as to when you should arm  
9 your TASER?

10 A No, sir.

11 Q Is it the policy of the sheriff's department  
12 not to arm the TASER until such time as you believe you  
13 have the right to use it?

14 A Not that I -- not that I recall, no, sir.

15 Q Okay. Well, what about with a gun, I mean,  
16 do you carry your pistol with the safety on?

17 A Yes, sir.

18 Q Okay. So as the pistol is in the holster,  
19 the safety is on --

20 A Yes, sir.

21 Q -- is that right?

22 And as the TASER's in the holster, the TASER  
23 is on?

24 A Yes, sir.

25 Q The safety's on?

34 (Pages 130 to 133)

Page 134

1 A (Nodding head affirmatively.)  
 2 Q And then when you pull your pistol, do you  
 3 take the safety off immediately or is it permissible to  
 4 take the weapon out as a deescalation tactic to make  
 5 somebody stand down so you don't have to take the  
 6 safety off and use the gun?  
 7 A Well, sir, if I can just correct you for a  
 8 moment. The Glock 22 does not have an external safety.  
 9 Q Okay.  
 10 A So I understand what your question is asking;  
 11 however, I wanted to identify that --  
 12 Q No. Thank you.  
 13 A -- when my weapon comes out of the holster,  
 14 there is no safety.  
 15 Q All right. Well, then the question as to the  
 16 TASER weapon.  
 17 A Yes, sir.  
 18 Q When you pull it out, it still has the safety  
 19 on?  
 20 A It does.  
 21 Q Okay. And is there any policy or procedure  
 22 of the sheriff's department not to release the safety  
 23 until you're ready to aim and shoot?  
 24 A No, sir, not that I'm aware of.  
 25 Q Okay. Have you been trained that you should

Page 135

1 not release the safety until you're ready to aim and  
 2 know you're fixing to shoot?  
 3 A No, sir.  
 4 Q Why would you arm it and release the safety  
 5 if you're not ready to aim it and shoot it?  
 6 A Because releasing that safety illuminates the  
 7 laser. And as we discussed earlier, that laser alone  
 8 is a deescalation technique because a typical and  
 9 reasonable person would understand, or anyone that has  
 10 any kind of experience with law enforcement with  
 11 TASERs, they would understand that that is the -- the  
 12 laser, the aiming laser for a TASER, and it's used as a  
 13 deescalation technique.  
 14 Q I understand.  
 15 Now, you didn't need the laser? You had a  
 16 flashlight, correct?  
 17 MR. WILLIAMS: Object to form.  
 18 MS. NGUYEN: Join.  
 19 THE WITNESS: So it --  
 20 BY MR. SPURLIN:  
 21 Q To illuminate?  
 22 A The laser is not used to illuminate.  
 23 MS. NGUYEN: Same objection.  
 24 THE WITNESS: The laser is used for an aiming  
 25 device.

Page 136

1 BY MR. SPURLIN:  
 2 Q Okay. So until such time as you're going to  
 3 point and aim the weapon, you don't need to arm the  
 4 weapon; is that true?  
 5 MR. WILLIAMS: Object to form.  
 6 MS. NGUYEN: Object to form. Mistakes  
 7 testimony.  
 8 THE WITNESS: That's not necessarily true  
 9 either.  
 10 BY MR. SPURLIN:  
 11 Q Okay.  
 12 A No, sir.  
 13 Q I'm just following your thought process. You  
 14 said the reason to arm it is because then the laser dot  
 15 will be activated, correct?  
 16 A Yes, sir.  
 17 Q And that is used to aim?  
 18 A Yes, sir.  
 19 Q Okay. That's the very purpose of it is to  
 20 aim, correct?  
 21 A Yes, sir.  
 22 Q Okay. Well, would it be fair to say that  
 23 until you're ready to aim, you don't need to arm the  
 24 weapon?  
 25 MR. WILLIAMS: Object to form.

Page 137

1 MS. NGUYEN: Join.  
 2 THE WITNESS: I mean, I -- I mean, I don't  
 3 necessarily agree with that. I mean, it --  
 4 BY MR. SPURLIN:  
 5 Q Okay. Well, what other purpose would arming  
 6 it do other than to assist you in aiming it?  
 7 A Well, I mean, arming it does -- it does  
 8 numerous things. It illuminates the flashlight so I  
 9 would be able to use that flashlight in the event that  
 10 I needed some additional light.  
 11 Q Let me stop you there.  
 12 A Yes, sir.  
 13 Q I'm going to let you tell me everything.  
 14 But in this case, that was not the reason you  
 15 would have armed it, because you already had your  
 16 flashlight out, correct?  
 17 A In this case, I don't think that I armed it  
 18 prior to actually pointing it at Mr. McBrayer. But  
 19 your question to me was what is it used for and --  
 20 Q I'm going to let you tell me that.  
 21 Well, in this case, do you believe you armed  
 22 the weapon at the same time you pointed and then shot  
 23 at Mr. McBrayer?  
 24 MS. NGUYEN: Object to form.  
 25 THE WITNESS: No, sir, I don't.

35 (Pages 134 to 137)

Page 138

1 BY MR. SPURLIN:

2 Q How long of a gap was there between arming it  
3 and shooting Mr. McBrayer?

4 MS. NGUYEN: Same objection.

5 THE WITNESS: I'm not sure of that, sir. I  
6 don't know. I'm sure that the log, along with my  
7 video, would be able to give you that.

8 BY MR. SPURLIN:

9 Q Was it a short period of time?

10 A Again, I don't -- I don't recall. It's been  
11 two years ago.

12 Q Okay. All right. I'm going to change gears.  
13 I'm was going through some preliminaries and chase  
14 rabbits.

15 Let me ask you, have you spoken to any of the  
16 other officers about their deposition testimony?

17 A No, sir.

18 Q Have you read any of the other officers'  
19 deposition testimony?

20 A No, sir.

21 Q Okay. Have you become aware, through any  
22 source, of any of the other officers' deposition  
23 testimony?

24 A No, sir.

25 Q Were you aware that Deputy Spurgeon said that

Page 139

1 you and he utilized excessive force?

2 A No, sir, I wasn't.

3 MS. NGUYEN: Object to form.

4 BY MR. SPURLIN:

5 Q Were you aware that he testified that using  
6 six TASER applications was excessive?

7 A No, sir. I wasn't aware of that.

8 Q Were you aware that he testified that that  
9 violated the policy of the sheriff's department?

10 A No, sir. I wasn't aware of that.

11 Q Six applications does violate the policy of  
12 the sheriff's department, does it not?

13 A No, sir, it does not.

14 Q Does that -- is the policy of the sheriff's  
15 department you should limit it to two applications in  
16 15 seconds?

17 A No, sir, that is not.

18 Q Okay. You've never been trained in that way?

19 A No, sir.

20 Q Never been told that?

21 A No, sir.

22 Q Okay. Major Torres never told you that?

23 A No, sir.

24 Q Okay. Were you aware that Deputy Spurgeon  
25 testified that application of the TASER for 30 seconds

Page 140

1 was excessive?

2 A No, sir. I'm not privy to anything that  
3 Deputy Spurgeon testified to.

4 Q Were you aware that he testified that  
5 violated the sheriff's department policy?

6 A No, sir.

7 Q Okay. Does it violate the sheriff's  
8 department policy?

9 A I'm sorry, what are you asking specifically?

10 Q Thirty seconds of application of the TASER?

11 A No, sir. Not a policy that I'm aware of.

12 Q Okay. Have you ever been trained as to how  
13 many different applications of the TASER are  
14 appropriate?

15 A I have, yes, sir.

16 Q And what is that training?

17 A There is a recommendation for no more than 15  
18 seconds. However, it also states that if there's  
19 exigent circumstances, that there is no -- no dedicated  
20 number.

21 Q Okay.

22 A And, again, that's -- I mean, that's not even  
23 a part of our policy that I'm aware.

24 Q The recommendation came from who?

25 A That's from TASER.

Page 141

1 Q Okay. And we're going to get into this more  
2 in a minute. But the sheriff's department has adopted  
3 TASER's warnings from Axon, correct?

4 A Yes, sir.

5 MS. NGUYEN: Object to form.

6 MR. WILLIAMS: Object to form.

7 BY MR. SPURLIN:

8 Q Major Torres uses TASER's information in  
9 training, correct?

10 MS. NGUYEN: Object to form.

11 THE WITNESS: I mean, he -- he uses the  
12 information given from TASER, yes.

13 BY MR. SPURLIN:

14 Q Okay. You were already handed three  
15 different exhibits by Ms. Nguyen that TASER produces,  
16 correct?

17 A Yes, sir.

18 Q And you said that's what was used in your  
19 training, correct?

20 A Yes, sir.

21 Q And one of the statements said that you are  
22 requested to read and obey it, correct?

23 A Yes, sir.

24 Q And one of them says that you are supposed to  
25 certify that you have read it and fully understand it,

36 (Pages 138 to 141)

Page 142

1 correct?  
 2 A Yes, sir.  
 3 Q And you signed those papers saying you read  
 4 it and fully understood it, correct?  
 5 MS. NGUYEN: Object to form.  
 6 THE WITNESS: Yes, sir.  
 7 BY MR. SPURLIN:  
 8 Q And you also certified that you would read  
 9 and obey those warnings, correct?  
 10 MS. NGUYEN: Object to form.  
 11 MR. WILLIAMS: Object to form.  
 12 THE WITNESS: Yes, sir.  
 13 BY MR. SPURLIN:  
 14 Q And one of those recommendations was no more  
 15 than 15 seconds in duration, correct?  
 16 MS. NGUYEN: Object to form.  
 17 MR. WILLIAMS: Object to form.  
 18 THE WITNESS: But it also states that the --  
 19 that TASER does not write policy and we should  
 20 follow our department's policy.  
 21 BY MR. SPURLIN:  
 22 Q I agree with that. That is what it says.  
 23 But your department has adopted that,  
 24 correct?  
 25 MS. NGUYEN: Object to form.

Page 144

1 MR. SPURLIN: Hasn't -- isn't --  
 2 MR. WILLIAMS: So I'm not going to let you  
 3 sit here and misrepresent things.  
 4 MR. SPURLIN: I'm not.  
 5 MR. WILLIAMS: And neither is the Court.  
 6 MR. SPURLIN: I am not.  
 7 BY MR. SPURLIN:  
 8 Q Sir, isn't it true that the sheriff's  
 9 department could write their own policy and they could  
 10 decide how they want to train, but instead of doing  
 11 that, they have chosen to take information provided by  
 12 TASER, warnings provided by TASER, and slide shows  
 13 provided by TASER and make that the policy?  
 14 MR. WILLIAMS: Object to form.  
 15 MS. NGUYEN: Object to form and foundation.  
 16 THE WITNESS: No, sir.  
 17 BY MR. SPURLIN:  
 18 Q That's not true?  
 19 A No, sir. So they use that for training.  
 20 This is actually the Tift County's policy. It doesn't  
 21 have TASER written on it anywhere.  
 22 Q I understand.  
 23 A So I can't attest to whether they adopted  
 24 TASER's policy.  
 25 Q Okay. But the training that the sheriff's

Page 143

1 MR. WILLIAMS: Object to form.  
 2 Misrepresents --  
 3 MS. NGUYEN: Misstates testimony.  
 4 MR. WILLIAMS: Misrepresents what the policy  
 5 says. Completely inappropriate.  
 6 MR. SPURLIN: Well, that's a speaking  
 7 objection now. What we agreed to is say "object  
 8 to the form."  
 9 MR. WILLIAMS: And I'm not going to sit here  
 10 and let you misrepresent things. And I don't  
 11 think the Court would appreciate that too when the  
 12 document is right in front of us and you have the  
 13 ability to look at it and use it with the witness  
 14 instead of trying to represent something that's  
 15 not in the document.  
 16 MR. SPURLIN: You know, Terry, that's not  
 17 even the question.  
 18 MR. WILLIAMS: You don't think that --  
 19 MR. SPURLIN: The question is did the  
 20 sheriff's department adopt that as its policy.  
 21 MR. WILLIAMS: And you said --  
 22 MR. SPURLIN: And you're referencing a TASER  
 23 document.  
 24 MR. WILLIAMS: And you represented what the  
 25 policy was, which was completely incorrect.

Page 145

1 department had provided you by Major Torres utilizes  
 2 100 percent documents prepared and provided by Axon,  
 3 correct?  
 4 MR. WILLIAMS: Object to form.  
 5 MS. NGUYEN: Object to form and foundation.  
 6 THE WITNESS: Again, sir, I -- I'm not part  
 7 of that training section. I don't know where  
 8 these documents come from. I don't -- all I know  
 9 is I get a PowerPoint presentation.  
 10 BY MR. SPURLIN:  
 11 Q I understand.  
 12 Well, look with me and let's go through them.  
 13 Look at -- you've got the policy in front of you,  
 14 Defendants' Exhibit No. 4, the Tift County Sheriff's  
 15 policy, correct?  
 16 A Yes, sir.  
 17 Q It says, "An approved TASER M26/X26 device  
 18 may only be used by employees that have successfully  
 19 completed the department approved training in its use  
 20 taught by a certified instructor," correct?  
 21 A Yes, sir.  
 22 Q So that's the policy of the sheriff's  
 23 department, right?  
 24 A Yes, sir.  
 25 Q Okay. And the TASER that you used, you were

37 (Pages 142 to 145)

Page 146

1 trained to use by Major Torres, correct?  
 2 A That is correct.  
 3 Q Okay. And the training material he used was  
 4 provided by TASER, correct?  
 5 A That is my understanding.  
 6 MS. NGUYEN: Object to form and foundation.  
 7 BY MR. SPURLIN:  
 8 Q Defendants' Exhibit No. 6, for instance, the  
 9 PowerPoint Ms. Nguyen question you about, you affirmed  
 10 that was the documents used by Major Torres when he  
 11 trained me, right?  
 12 A Yes, sir.  
 13 Q And on the very first page of that document  
 14 it says, "TASER Training," correct?  
 15 A It does.  
 16 Q And it says, "TASER X26P User Course,"  
 17 correct?  
 18 A Yes, sir.  
 19 Q Okay. And it says at the top "Axon," does it  
 20 not?  
 21 A Absolutely.  
 22 Q So when you had the training, the materials  
 23 that were used and the PowerPoint were provided by  
 24 Axon, right?  
 25 A Correct.

Page 148

1 Q I understand.  
 2 And Mr. Williams said, no, he thought it was  
 3 Defendants' Exhibit No. 9, right?  
 4 A Yes, sir.  
 5 MS. NGUYEN: Object to form.  
 6 BY MR. SPURLIN:  
 7 Q And then a comparison was made of the two to  
 8 see if they were almost 100 percent identical, correct?  
 9 A Yes, sir.  
 10 Q And you were asked on the record under oath  
 11 to identify if they were practically identical,  
 12 correct?  
 13 A Yes, sir.  
 14 Q And you were asked about every one of those  
 15 warnings that she went through with you to see if they  
 16 were identical, correct?  
 17 A Yes, sir, I was.  
 18 Q And they were?  
 19 A Yes.  
 20 Q And those were the warnings and  
 21 recommendations that you were given in your training by  
 22 Major Torres, correct?  
 23 A Yes, sir. That's correct.  
 24 Q That was provided by the sheriff's department  
 25 of Tift County?

Page 147

1 Q Okay. And Torres was certified by Axon,  
 2 correct?  
 3 A I don't know that to be --  
 4 MS. NGUYEN: Object to form and foundation.  
 5 THE WITNESS: I don't know that to be a fact.  
 6 BY MR. SPURLIN:  
 7 Q Okay. And you had to sign forms that said  
 8 you understood and had read and would obey those  
 9 warnings and recommendations, correct?  
 10 MR. WILLIAMS: Object to form.  
 11 MS. NGUYEN: Object to form.  
 12 THE WITNESS: I mean, I would have to look at  
 13 the paper to see exactly what it states.  
 14 BY MR. SPURLIN:  
 15 Q Let me show you -- ask you to look at  
 16 Defendants' Exhibit No. 8. You've already identified  
 17 this as the warnings that were utilized in your  
 18 training when Ms. Nguyen asked you questions, correct?  
 19 A I think --  
 20 MS. NGUYEN: Object to form.  
 21 THE WITNESS: I think that we discussed we  
 22 weren't sure --  
 23 MS. NGUYEN: Misstates testimony.  
 24 THE WITNESS: -- which one was used.  
 25 BY MR. SPURLIN:

Page 149

1 A Correct.  
 2 Q Okay. And on page one of whichever one you  
 3 want to look at, No. 2 said that you have to certify  
 4 that you will read and obey these recommendations and  
 5 warnings, correct?  
 6 A Yes, sir.  
 7 Q And it said that you have read and understand  
 8 and will follow all current instructions, warnings, and  
 9 training materials, correct?  
 10 A Yes, sir.  
 11 Q Okay. And you have done that, right?  
 12 A Yes, sir.  
 13 Q And you've done that because the sheriff's  
 14 department has mandated that you do that?  
 15 A No. I don't see --  
 16 MR. WILLIAMS: Object to form.  
 17 THE WITNESS: -- anything in the policy that  
 18 says that.  
 19 BY MR. SPURLIN:  
 20 Q Okay. Well, it says in No. 1 that you have  
 21 to approve -- be approved and take this training,  
 22 correct?  
 23 A Yes, sir, which I did.  
 24 Q And then the training materials say you have  
 25 to sign and certify that you read and understand and

38 (Pages 146 to 149)



Page 150

1 will follow and obey them, right?

2 MS. NGUYEN: Object to form.

3 THE WITNESS: Yes, sir.

4 BY MR. SPURLIN:

5 Q Okay. All right. Has anyone with the  
6 sheriff's department told you that you do not have to  
7 follow the warnings, instructions, and relevant TASER  
8 training materials that you were trained with?

9 A No, sir.

10 Q In fact, Major Torres told you that's what  
11 you did have to follow, did he not?

12 MR. WILLIAMS: Object to form.

13 MS. NGUYEN: Join.

14 THE WITNESS: I don't recall him saying that.

15 BY MR. SPURLIN:

16 Q Okay. But no one's ever told you you didn't?

17 A No, sir.

18 Q Okay. All right. And do you remember as  
19 part of that that you had to sign a document certifying  
20 that you understood and would follow those?

21 A Yes, sir.

22 Q Okay. And you did, in fact, do that, right?

23 A To the best of my recollection, yes.

24 Q Okay. All right. And I, for some reason,  
25 have not gotten your signed paperwork. But we have the

Page 151

1 one for Mr. Spurgeon, so I'm going to ask you about  
2 Deputy Spurgeon.

3 (Plaintiffs' Exhibit No. 27 was marked for  
4 identification.)

5 MR. SPURLIN: And, I'm sorry, guys, I don't  
6 have but one of these. I just got these documents  
7 a few days ago.

8 Hand that to him, if you would.

9 MS. NGUYEN: Can I -- I'm going to take a  
10 look at that.

11 MR. SPURLIN: Sure.

12 MS. NGUYEN: Bates numbers -- oh, this has no  
13 Bates numbers.

14 MR. SPURLIN: That was used in Mr. Spurgeon's  
15 deposition in the other case. And if you've  
16 read -- if you've gotten his deposition, it's  
17 attached.

18 MR. WILLIAMS: So then that's not the  
19 documents you got most recently then? This is  
20 something you had before from McBrayer, because we  
21 Bates stamped the ones we just sent out, another  
22 copy recently.

23 MR. SPURLIN: I got it from the old  
24 deposition. I'm certain it should be the same  
25 document, right?

Page 152

1 MR. WILLIAMS: I know. But you just  
2 represented you just got it a few days ago when  
3 you actually got it from the previous deposition  
4 that you all had for over a year and a half.

5 MR. SPURLIN: That's false. I just got it  
6 from Mr. Webster yesterday.

7 MR. WILLIAMS: Well, then that's what you  
8 should say.

9 MR. SPURLIN: What I said was true. I just  
10 got it. I mean, I'm not going to write a book  
11 every time I make a statement. I made a truthful  
12 statement that I just got it.

13 MR. WILLIAMS: The implications was that we  
14 had just turned it over, is what I took you as  
15 saying.

16 MR. SPURLIN: Terry, I didn't get the  
17 documents from you all until about ten days ago.

18 MR. WILLIAMS: I know that.

19 MR. SPURLIN: I granted you two extensions.  
20 So, I mean --

21 MR. WILLIAMS: I know that.

22 MR. SPURLIN: -- I have just gotten them.

23 MR. WILLIAMS: But I'm just -- and that's  
24 what you seem to be trying to implicate. But yet  
25 you're pulling out something that you and

Page 153

1 Mr. Webster, plaintiffs, have had for a year and a  
2 half.

3 MR. SPURLIN: There no need to argue about  
4 it.

5 MR. WILLIAMS: So just don't try to twist --

6 MR. SPURLIN: I'm not.

7 MR. WILLIAMS: Yeah. I see what you're  
8 doing. Just don't --

9 MR. SPURLIN: You don't see what I'm doing.

10 MR. WILLIAMS: Let's play by the book here.

11 MS. NGUYEN: What was that marked?

12 MR. SPURLIN: Twenty-seven.

13 MR. WILLIAMS: This actually has Plaintiffs'  
14 Exhibit 3 also attached to the end of it, so it's  
15 a compilation. I don't know what it --

16 MS. NGUYEN: I don't know how it's 27 --

17 MR. WILLIAMS: So this one is actually --

18 MS. NGUYEN: -- because I have it in my  
19 records as it was marked as Exhibit 2 to  
20 Spurgeon's deposition.

21 MR. SPURLIN: I'll tell you exactly what it  
22 is. There's no secret to it. It is my Exhibit 27  
23 in this case, which is a combination of two and  
24 three --

25 MR. WILLIAMS: Okay.

39 (Pages 150 to 153)

Page 154

1 MR. SPURLIN: -- from Mr. Spurgeon's prior  
2 deposition.

3 MS. NGUYEN: Okay.

4 MR. WILLIAMS: Now I understand. All right.

5 MS. NGUYEN: Got it. Give me a moment. I'm  
6 just pulling those up.

7 And three would be the same as Exhibit 9,  
8 which we already went over, the warnings?

9 MR. SPURLIN: Yeah. I -- some of your  
10 exhibits and mine are going to overlap. I'll give  
11 them back to you.

12 MR. WILLIAMS: Yeah. So Plaintiffs'  
13 Exhibit 27 actually does exclude the March 1, 2013  
14 version of the TASER Handheld CEW Warnings,  
15 Instructions, Information.

16 MR. SPURLIN: Right.

17 BY MR. SPURLIN:

18 Q All right. Mr. Tripp, I just had two  
19 questions about that document.

20 The course attendance sheet there has a date  
21 on it of 12/18/2018.

22 Do you see that?

23 A I do.

24 Q And it doesn't have your name there, correct?

25 A That is correct.

Page 155

1 Q But you're certain that's when you did your  
2 training, correct?

3 A According to my training record, that's when  
4 I completed it.

5 Q Right.

6 And you would have done it with these  
7 gentlemen whose names are listed here?

8 A I can't tell you that for a fact. I don't  
9 know how many courses they did. I don't know why --  
10 why it was set up this way. I don't know why my name's  
11 not on here.

12 Q Okay. And the primary instructor listed for  
13 these eight -- seven people are Daniel Torres, correct?

14 A That is correct.

15 Q So if Daniel Torres taught them and if he  
16 taught you on December 18th, 2018, you all would have  
17 been together?

18 A Not necessarily.

19 Q Well, how could we be in two rooms?

20 A Well, because there's 24 hours in a day.

21 Q Okay. All right. Look at the next page of  
22 that document. This is the certification form that I  
23 was referring to.

24 You believe you signed a form just like this,  
25 correct?

Page 156

1 A I can't attest to that because I don't have  
2 one that I signed.

3 Q I don't either, and that's the reason I'm  
4 asking the question.

5 A Well, I'm not going to attest that I signed  
6 this document.

7 Q All right, sir. I thought you told me  
8 earlier that you did remember being asked to certify,  
9 to finish the course, that you had read, you understood  
10 and you would follow and obey all of the training  
11 materials and precautions that were provided in the  
12 training; is that correct?

13 MS. NGUYEN: Object to form and foundation.

14 MR. WILLIAMS: Object to the form.

15 THE WITNESS: And what you're asking me is if  
16 I signed this exact paper. And I don't know that  
17 to be a fact.

18 BY MR. SPURLIN:

19 Q All right, sir. This one is signed by Connor  
20 Spurgeon, though, correct?

21 A It appears that way, yes, sir.

22 Q Okay. All right. And then it's certified by  
23 Daniel Torres, correct?

24 A Yes, sir.

25 Q Okay.

Page 157

1 MS. NGUYEN: When you say "this" --

2 MR. SPURLIN: Page two.

3 BY MR. SPURLIN:

4 Q All right. And then look at page three of  
5 the document. It is an Instructor and User Warning  
6 Risk and Release Agreement, correct?

7 A Yes, sir.

8 Q This one is signed by Connor Spurgeon,  
9 correct?

10 A Yes, sir.

11 Q It has "TASER" at the top, correct?

12 A It does.

13 Q Okay. And do you remember having to sign a  
14 form like that?

15 MS. NGUYEN: Object to form and foundation.

16 THE WITNESS: I mean, I don't remember what  
17 forms I signed in 2018.

18 BY MR. SPURLIN:

19 Q Okay. You told Ms. Nguyen earlier you did  
20 remember having to take a test?

21 A Yes, sir.

22 Q And you did remember having to sign documents  
23 before you could be a person who was tased, correct?

24 A Yes, sir.

25 Q You had to sign consent forms before you

40 (Pages 154 to 157)

Page 158

1 would allow them to do that, right?

2 A I had to sign documents. I don't recall  
3 exactly what those documents were.

4 Q All right, sir. Okay.

5 MR. WILLIAMS: Can we -- we need to take a  
6 break. I just got a text that the school is  
7 trying to reach you about one of your children.  
8 You can give them a call. Let's take a break for  
9 a second.

10 MS. NGUYEN: Let's go off the record.

11 THE VIDEOGRAPHER: Go off the record?

12 MR. WILLIAMS: Yeah.

13 THE VIDEOGRAPHER: Okay. The time is 2:17.  
14 We're going off the record.

15 (Whereupon, a recess was taken.)

16 THE VIDEOGRAPHER: The time is 2:30. We're  
17 back on the record.

18 BY MR. SPURLIN:

19 Q Deputy, I want to get a couple of  
20 preliminaries out of the way. I know most of these  
21 were asked when you were deposed previously.

22 Your education for your degrees has been  
23 online?

24 A Yes, sir.

25 Q And do you have any relatives over 18 who

Page 159

1 live in south Georgia?

2 A Are you talking -- what kind of -- I mean, I  
3 have a lot of relatives that live in south Georgia.

4 Q Okay.

5 A I mean, are you talking immediately family or  
6 are you talking --

7 Q Do your parents live in south Georgia?

8 A My mother does. My dad's deceased.

9 Q Where does your mama live?

10 A She lives in Lenox.

11 Q Okay. And her last name is --

12 A Tripp.

13 Q Okay. What's her first name?

14 A Tammy.

15 Q Do you have any brothers and sisters who live  
16 in south Georgia?

17 A No, sir.

18 Q Do you have any children over 18 who live in  
19 south Georgia?

20 A No, sir.

21 Q Okay. Do you have any siblings who live in  
22 south Georgia, brothers and sisters? I may have asked  
23 you that.

24 A No, sir, I don't.

25 Q Do you have any aunts and uncles?

Page 160

1 A Yes.

2 Q Many?

3 A Yeah. My whole family is from south Georgia.

4 Q And their last names would be?

5 A Ward, Webb. I don't remember. My aunt's  
6 married. She just recently got married. I don't  
7 remember the last name.

8 Q What county would they live in?

9 A Tift.

10 Q Okay. Any live in Cook County?

11 A My mom.

12 Q Lowndes County?

13 A No, not that I'm aware of.

14 Q Brooks County?

15 A No, sir. I've got some family up in Turner  
16 County.

17 Q Okay. Have you ever been arrested?

18 A No, sir.

19 Q Have you ever had any family dispute where  
20 law enforcement has been called?

21 A No, sir.

22 Q Have you ever been taken to jail?

23 A No, sir.

24 Q Have you ever been party to any kind of  
25 domestic TPO or anything like that?

Page 161

1 A No, sir.

2 Q Okay. How many children do you have?

3 A I have five.

4 Q And how many do you have custody of?

5 A Three.

6 Q Okay. And where are the other two?

7 A In North Carolina.

8 Q Okay. And quickly tell me who the children's  
9 mothers are.

10 A Yes, sir. So the three that live with me,  
11 their mother is Desiree Tripp.

12 Q Okay. Where does she live?

13 A She lives in South Carolina.

14 Q Okay. And --

15 A I have a daughter with my ex-wife. Her name  
16 is Autumn Tripp.

17 Q Where does she live?

18 A She lives in Swansboro, North Carolina.

19 Q And your daughter's name and age?

20 A Her name is Arissa, and she is seven.

21 Q Okay. And your fifth child?

22 A My fifth child, her mother's name is Mary  
23 Milligan.

24 Q And they live in?

25 A She lives in North Carolina.

41 (Pages 158 to 161)

Page 162

1 Q And the fifth child is?  
 2 A Reagan.  
 3 Q And Reagan is?  
 4 A Reagan is three. Sorry.  
 5 Q Okay. All right. Your initial training in  
 6 law enforcement, was that at the police academy?  
 7 A Yes, sir.  
 8 Are you asking civilian law enforcement?  
 9 Q (Nodding head affirmatively.)  
 10 A Yes, sir.  
 11 Q All right. And that was in 2018?  
 12 A Correct.  
 13 Q Okay. And how long was that course?  
 14 A I believe it's 12 weeks.  
 15 Q Did you receive any training while there in  
 16 how to use a conducted energy weapon?  
 17 A No, sir.  
 18 Q Okay. Now, at Tift County, have you ever had  
 19 any training using a conducted energy weapon other than  
 20 the course we've talked about with Major Torres?  
 21 A I did a refresher course, yes.  
 22 Q Okay. When did you do that?  
 23 A I'm not sure exactly what the date was. It  
 24 was after I returned back to Tift County.  
 25 Q Okay. How many hours was the initial course?

Page 163

1 Do you remember?  
 2 A It's an eight-hour course.  
 3 Q Does that mean you're actually in class or in  
 4 some kind of practical training for all eight hours?  
 5 A Yes, sir.  
 6 Q Okay. The refresher course, how many hours  
 7 was that?  
 8 A I don't remember.  
 9 Q Okay. Did you receive the same type  
 10 instructions in the refresher course about when you  
 11 should use it and how you should use it?  
 12 A I received the same type of training.  
 13 Q Okay. And was it the same type information  
 14 and warnings that we've already gone through that were  
 15 provided by Axon?  
 16 MS. NGUYEN: Object to the form and  
 17 foundation.  
 18 THE WITNESS: To my recollection.  
 19 BY MR. SPURLIN:  
 20 Q Okay. Basically the same course, just to  
 21 refresh, correct?  
 22 MS. NGUYEN: Same objections.  
 23 THE WITNESS: Yes, sir.  
 24 BY MR. SPURLIN:  
 25 Q No major changes that you can recall?

Page 164

1 MS. NGUYEN: Object to form and foundation.  
 2 THE WITNESS: Not that I recall.  
 3 BY MR. SPURLIN:  
 4 Q Okay. Do you know when you did that  
 5 refresher course?  
 6 A No, sir, I don't. I don't remember the date.  
 7 Q Was it before or after this event?  
 8 A It would have been after this event.  
 9 Q Okay. All right. Have you ever received any  
 10 other training from the Tift County Sheriff's Office  
 11 regarding the use of a conducted energy weapon other  
 12 than those two courses?  
 13 A Not that I recall.  
 14 Q Okay. So never had any meeting with other  
 15 deputies where they specifically discuss the Tift  
 16 County Sheriff's Department policies?  
 17 A Not that I recall.  
 18 Q No specific course taught by Major Torres or  
 19 anyone else where they specifically discussed the Tift  
 20 County policy on the use of a conducted energy weapon,  
 21 correct?  
 22 A Not that I recall, no, sir.  
 23 Q The only training you've received since  
 24 you've been a deputy in Tifton regarding a conducted  
 25 energy weapon has been the two courses that Major

Page 165

1 Torres has given that utilize the Axon materials,  
 2 correct?  
 3 A To my recollection.  
 4 Q Okay. All right. Did you ever receive any  
 5 training at the Lenox Police Department or the Omega  
 6 Police Department or anywhere else on how, when and  
 7 under what circumstances you could use a conducted  
 8 energy weapon?  
 9 A No, sir.  
 10 Q Okay. Have you ever received any training  
 11 from anyone else inconsistent with that training and  
 12 those instructions, warnings, and training materials  
 13 that you were provided by Major Torres in your training  
 14 in Tift County?  
 15 A No, sir.  
 16 Q Okay. Has Major Torres or anyone else with  
 17 the sheriff's department ever reviewed or discussed any  
 18 of those training materials or training warnings with  
 19 you independent of those two courses?  
 20 A Not that I can recall, no, sir.  
 21 Q All right, sir. Have you ever had an  
 22 investigation or an incident regarding use of force  
 23 that involved you?  
 24 A No, sir.  
 25 Q Okay. So this was the only time that you

42 (Pages 162 to 165)

Page 166

1 ever had any investigation?

2 A Yes, sir.

3 Q Okay. And I'm not saying you're wrong, but I  
4 have read some of the statements last night, and other  
5 deputies said to GBI agents they were aware that you  
6 had another investigation regarding use of force.

7 Does that refresh your memory in any way?

8 MR. WILLIAMS: Object to form.

9 THE WITNESS: No, sir, it doesn't.

10 BY MR. SPURLIN:

11 Q Okay. All right. Can you define for me what  
12 is excessive force?

13 MR. WILLIAMS: Object to form.

14 THE WITNESS: Excessive force is any force  
15 that is not reasonably objective.

16 BY MR. SPURLIN:

17 Q Okay. Is it force that is more than  
18 necessary?

19 MR. WILLIAMS: Object to form.

20 THE WITNESS: No, sir. It's defined as any  
21 force that is not reasonable.

22 BY MR. SPURLIN:

23 Q Okay. Is there any reason you should use  
24 more force than is necessary?

25 MR. WILLIAMS: Object to form.

Page 167

1 THE WITNESS: I mean, I don't -- I don't  
2 understand what you mean by more than necessary.

3 BY MR. SPURLIN:

4 Q Well, for instance -- and I'll just hand you  
5 the document. And we can go ahead and talk about it.

6 You have been trained some in the use of  
7 deadly force, have you not?

8 A I have, yes, sir.

9 Q And you've received that training from who?

10 A I mean, I've received training on deadly  
11 force from the Tift County Sheriff's Office and the --  
12 in GPSTC.

13 MS. NGUYEN: Do you want to see this too?

14 THE WITNESS: I'm sorry, the academy.

15 BY MR. SPURLIN:

16 Q Okay. What did you say, just so I know?

17 A GPSTC.

18 Q What?

19 A GPSTC is the Georgia --

20 MR. WILLIAMS: Peace Officer Standard  
21 Training.

22 THE WITNESS: Right.

23 (Plaintiffs' Exhibit No. 16 was marked for  
24 identification.)

25 BY MR. SPURLIN:

Page 168

1 Q It's an acronym?

2 A Yes, sir. I'm sorry.

3 Q That's all right.

4 I'm going to show you what's been marked as  
5 Exhibit 16, Plaintiffs' 16, and ask you is that the Use  
6 of Force Policy 3.01 in force through the Tift County  
7 Sheriff's Office?

8 MS. NGUYEN: You said that's marked as  
9 Plaintiffs' Exhibit 16?

10 MR. SPURLIN: Yes.

11 MS. NGUYEN: And so that would have been  
12 Exhibit 4, I believe, to Spurgeon's deposition,  
13 right, the same one?

14 MR. WILLIAMS: Right. I know I had this  
15 here.

16 MR. SPURLIN: It is supposed to be the  
17 document that you all recently produced, not from  
18 the other deposition, but --

19 MR. WILLIAMS: Let's make sure it's the same  
20 one. Yeah.

21 MS. NGUYEN: I need to look at it. You don't  
22 have copies?

23 MR. SPURLIN: I'm sorry.

24 MR. WILLIAMS: This is defendants' Bates  
25 stamp one, it looks like.

Page 169

1 MS. NGUYEN: Okay.

2 MR. WILLIAMS: It's at the bottom of it.

3 MS. NGUYEN: Got it.

4 MR. WILLIAMS: Production.

5 MS. NGUYEN: Defendants' one.

6 MR. WILLIAMS: It's the use of -- just  
7 general use of force standard -- I mean, policy.

8 BY MR. SPURLIN:

9 Q The question is simply is that the use of  
10 force policy currently in effect with respect to the  
11 Tift County Sheriff's Office?

12 A I believe it is.

13 Q And if you'll look on the first page, it said  
14 it was amended on February 5th, 2016, correct?

15 A Correct.

16 Q And this was just produced to me. So that  
17 would have been the policy in force when this incident  
18 happened with Mr. McBrayer, correct?

19 A To the best of my knowledge, yes.

20 Q Okay. And deadly force is restricted to  
21 certain circumstances, correct?

22 Do you want me to be more specific?

23 A Yes, sir, please.

24 Q You can't use deadly force if somebody has  
25 committed a speeding violation, correct?

43 (Pages 166 to 169)



Page 170

1 A No, sir.  
 2 Q You can't use deadly force if somebody has a  
 3 traffic ticket, right?  
 4 A Correct.  
 5 Q You can't use deadly force if somebody is  
 6 littering, correct?  
 7 A Correct.  
 8 Q You can't use deadly force for misdemeanors,  
 9 correct?  
 10 MR. WILLIAMS: Object to the form. I mean,  
 11 to the extent that's an incomplete -- I don't  
 12 think the -- use of force is not contingent upon  
 13 the offense being committed. It's more of the  
 14 circumstances, right? So I object to -- go ahead.  
 15 MR. SPURLIN: Well, I would respectfully  
 16 disagree.  
 17 BY MR. SPURLIN:  
 18 Q The questions were you cannot use deadly  
 19 force for traffic tickets or misdemeanors. That is, in  
 20 fact, a true statement, is it not?  
 21 MR. WILLIAMS: Object to form.  
 22 MS. NGUYEN: Join.  
 23 THE WITNESS: I mean, I guess it would depend  
 24 on the circumstances.  
 25 BY MR. SPURLIN:

Page 172

1 misdemeanors, comma, non-forcible felonies, and  
 2 forcible felonies not in progress except as defined in"  
 3 two sections above.  
 4 Did I read that accurately?  
 5 A Yes, sir. That's correct.  
 6 Q I mean, the force has got to be balanced  
 7 against what you all's need to arrest them, right?  
 8 A Yes.  
 9 Q And to be fair, if a guy has just killed two  
 10 people and he's fleeing, you can use deadly force  
 11 because of the nature of the crime, right?  
 12 A Correct.  
 13 Q But you can't use deadly force because he ran  
 14 a stop sign and he's going to get away, right?  
 15 A I mean, I guess that -- for that situation  
 16 specifically, no. But, again, it depends on the  
 17 circumstances. It depends on a totality of the  
 18 circumstances, not just a -- one specific infraction or  
 19 charge, okay.  
 20 Q That's not what it says, is it?  
 21 MR. WILLIAMS: Object to the form.  
 22 BY MR. SPURLIN:  
 23 Q It doesn't say in B2 that you can use deadly  
 24 force any time for a traffic violation or a  
 25 misdemeanor, does it?

Page 171

1 Q Well, so you believe it's appropriate for you  
 2 apprehending someone who has committed a traffic  
 3 violation to use deadly force?  
 4 A I didn't say that.  
 5 Q I'm asking.  
 6 MR. WILLIAMS: Object to form.  
 7 MS. NGUYEN: Object to the form.  
 8 THE WITNESS: No, sir. If they've merely  
 9 committed a traffic infraction, no.  
 10 BY MR. SPURLIN:  
 11 Q Okay. Because the overriding thing you have  
 12 to do is balance the risk and the benefit, correct?  
 13 A Well, it's not objectively reasonable.  
 14 Q I understand.  
 15 Because you have to balance the law  
 16 enforcement's need to arrest them for that ticket  
 17 versus the harm, right?  
 18 MR. WILLIAMS: Object to form.  
 19 THE WITNESS: Correct.  
 20 BY MR. SPURLIN:  
 21 Q Okay. In fact, isn't that in the policy  
 22 on -- the pages I have are not numbered. It looks like  
 23 page one, two, three, four, under 3B specifically. It  
 24 says, "Shots shall not be fired at persons who have  
 25 committed or are committing traffic violations, comma,

Page 173

1 A No.  
 2 Q Okay. So -- I mean, don't you agree the  
 3 overall policy is you got to balance the harm they have  
 4 committed, the nature of the law enforcement's need to  
 5 get them now versus how much harm you could potentially  
 6 do to them or to someone else, right?  
 7 MR. WILLIAMS: Object to form.  
 8 THE WITNESS: Okay. I mean, you're using it  
 9 as a past tense, the crime they committed. Let's  
 10 look at the harm that they could be doing at that  
 11 point in time or in the future. You have to  
 12 balance those things as well.  
 13 BY MR. SPURLIN:  
 14 Q Let me ask you this. Isn't there a policy  
 15 that you all aren't supposed to chase people at high  
 16 speeds if you know who they are and they've only  
 17 committed a misdemeanor?  
 18 A Yes, sir.  
 19 Q Okay. So that's a balancing? We know who he  
 20 is. We can pick him up next week. We don't need to  
 21 have a 90 mile per hour chase and kill Johnny Spurlin  
 22 who's driving along peaceably, right?  
 23 A Yes, sir.  
 24 Q Okay. So generally you do agree there's a  
 25 balancing of the crime they've committed and the harm

44 (Pages 170 to 173)

Page 174

1 they may have committed versus how much harm you might  
2 commit or harm to them or others, right?

3 MR. WILLIAMS: Object to form.

4 THE WITNESS: Yes.

5 BY MR. SPURLIN:

6 Q Okay. Well, isn't that part of, you said --  
7 what was your -- what was your definition, reasonably  
8 objective?

9 A Reason -- yes, sir.

10 Q The reasonableness is the balancing, right?

11 A Correct.

12 Q If I'm -- if I'm chasing a guy who has  
13 committed two murders, I can use more force than I can  
14 from chasing somebody who has a run a stop sign ticket,  
15 right?

16 MR. WILLIAMS: Object to form.

17 THE WITNESS: I mean, not necessarily,  
18 because you have to weigh the balance between what  
19 your -- how it's going to affect the population as  
20 well.

21 BY MR. SPURLIN:

22 Q Okay.

23 A You know, if I'm chasing this guy through a  
24 subdivision, then, no, it doesn't make any sense to  
25 chase this murder suspect through a subdivision or a

Page 175

1 school zone with children out playing.

2 Q Okay.

3 A You know, because now you're looking at  
4 causing more damage to these people than you are, you  
5 know, maybe trying to catch that guy another time or  
6 catch up with him later.

7 Q Is it ever objectively reasonable to use  
8 deadly force against someone whose only crime is  
9 running a stop sign?

10 MR. WILLIAMS: Object to form.

11 THE WITNESS: I mean, the only crime they  
12 committed at that point in time?

13 BY MR. SPURLIN:

14 Q Yeah.

15 A I mean, are they a hazard to other people? I  
16 mean, it's -- you're asking me to -- you're asking me  
17 to tell you if it's objectively reasonable to use  
18 deadly force against somebody who has only ran a stop  
19 sign. You know, if that is the only circumstance, then  
20 I would say no.

21 Q Okay. All right. Based on your education,  
22 training and experience, you believe you're capable of  
23 determining in a factual situation what is excessive  
24 force?

25 A Yes.

Page 176

1 Q And in this case, do you believe that six  
2 TASER applications for 30 seconds is excessive force?

3 A No, sir, I don't.

4 Q Okay. You would agree that it is the policy  
5 of the sheriff's department, based on this document,  
6 not to use excessive force?

7 A Correct.

8 Q You've been trained not to use excessive  
9 force?

10 A Correct.

11 Q Okay. You understand Sheriff Scarbrough's  
12 policy is not to use excessive force?

13 A Yes, sir.

14 Q You were taught that at the police academy?

15 A Yes, sir.

16 Q You utilize that in your work every day,  
17 correct?

18 A That is correct.

19 Q Okay. And your training was so that you  
20 would not use excessive force, correct?

21 A Correct.

22 Q Now, do you agree that a citizen has a right  
23 to be free from excessive force?

24 A Yes, sir, I agree with that.

25 Q You've known that ever since you went to the

Page 177

1 police academy, right?

2 A Yes, sir.

3 Q Okay. And do you agree that a person has a  
4 right to be free from excessive TASER applications?

5 MR. WILLIAMS: Object to form.

6 MS. NGUYEN: Join.

7 THE WITNESS: Can you define what excessive  
8 TASER applications is.

9 BY MR. SPURLIN:

10 Q Okay. Can you define for me what you think  
11 excessive TASER application is?

12 MR. WILLIAMS: Object to form.

13 THE WITNESS: No, sir. You're the one asking  
14 me the questions. I would like --

15 BY MR. SPURLIN:

16 Q And I just asked you.

17 A I would like for you to define to me what you  
18 consider excessive TASER applications.

19 Q Okay. I'm trying to. I'm trying to clarify  
20 your thought process.

21 In your mind, how many TASER applications  
22 would be excessive?

23 MR. WILLIAMS: Object to form.

24 THE WITNESS: In my mind, I --

25 MS. NGUYEN: Join.

45 (Pages 174 to 177)

Page 178

1 THE WITNESS: -- I would not put a number on  
 2 TASER applications as far as being excessive. And  
 3 the reason I say that is because if that person is  
 4 still an imminent danger to other people, then  
 5 I -- I can still apply that TASER, especially when  
 6 it hasn't been effective up to that point.  
 7 BY MR. SPURLIN:  
 8 Q Okay.  
 9 A I can still apply that TASER because that  
 10 person is still a danger to the people around.  
 11 Q Okay. So if, in this factual situation, Mr.  
 12 McBrayer was still fighting with you, you believe you  
 13 could have tasered him more than ten times and not been  
 14 excessive?  
 15 A Yes, sir, I do believe that.  
 16 Q And you believe if Mr. McBrayer had been  
 17 actively resisting, you could have tasered him up to 15  
 18 times without it being excessive?  
 19 A No, sir. There's a difference between  
 20 actively resisting and creating a hazard for other  
 21 people.  
 22 Q Okay. Well, if he's actively resisting you  
 23 and Deputy Spurgeon, is he a risk to you two?  
 24 MS. NGUYEN: Object to form.  
 25 THE WITNESS: Your initial was not actively

Page 179

1 resisting. Your initial question was at what  
 2 point do I think it's excessive. And my answer to  
 3 you was if that person is still a danger to other  
 4 people.  
 5 BY MR. SPURLIN:  
 6 Q Okay. If Mr. McBrayer was a danger to you or  
 7 Deputy Spurgeon, do you believe you could have applied  
 8 your TASER 15 times?  
 9 A As many times as necessary to subdue him and  
 10 control that situation, yes, sir.  
 11 Q Okay. So your training and experience has  
 12 been that there is no limitation on the number of TASER  
 13 applications you can give to someone who's still a  
 14 danger; is that correct?  
 15 A As long as the exigent circumstances still  
 16 exist.  
 17 Q Okay. And the same question with respect to  
 18 number of seconds, is there any limitation on how many  
 19 seconds you can apply the TASER to the person if  
 20 they're still a danger to you or others?  
 21 A No, sir.  
 22 MR. WILLIAMS: Object to form and foundation.  
 23 THE WITNESS: If exigent -- if exigent  
 24 circumstances still exist, there is no limit --  
 25 BY MR. SPURLIN:

Page 180

1 Q Okay.  
 2 A -- that I'm aware of.  
 3 Q All right. So in your manner of practicing  
 4 law enforcement, you don't believe there's any  
 5 limitation on the number of times or the number of  
 6 seconds that you can apply a TASER, correct?  
 7 A Under exigent circumstances.  
 8 MS. NGUYEN: Object to form and foundation.  
 9 BY MR. SPURLIN:  
 10 Q Okay. So as long as you believe the person  
 11 to be dangerous to either themselves or others, you  
 12 believe there is no limitation on the number of TASER  
 13 applications and the number of times or seconds that  
 14 you can apply the TASER; is that right?  
 15 MR. WILLIAMS: Object to form.  
 16 MS. NGUYEN: Same objections.  
 17 THE WITNESS: Rephrase that for me, please.  
 18 BY MR. SPURLIN:  
 19 Q As long as you believe the danger still  
 20 exists to you or to the person, you believe there's no  
 21 limitations on the number of applications or on number  
 22 of seconds in applying a TASER; is that correct?  
 23 MR. WILLIAMS: Object to form.  
 24 THE WITNESS: I believe that --  
 25 MS. NGUYEN: Object to form and foundation.

Page 181

1 THE WITNESS: I believe that as long as that  
 2 person is -- as long as the exigent circumstances  
 3 still exist where that person could potentially  
 4 harm someone else, I would agree that there is no  
 5 limit to how many times that that person can be  
 6 tasered.  
 7 BY MR. SPURLIN:  
 8 Q Did Major Torres ever tell you that as long  
 9 as there is some risk of danger, that you could apply  
 10 it as many times as needed for as many seconds needed?  
 11 A I would have to refer back to the policies,  
 12 but I believe that the policies state that if there's  
 13 exigent circumstances.  
 14 Q Yes, sir.  
 15 A Even the -- I'll stop right there because I  
 16 don't want to misrepresent what the policy says.  
 17 Q And that's. I'm just going to try to keep  
 18 you on the question.  
 19 The question wasn't what the policy says. It  
 20 was what did Major Torres tell you in the training?  
 21 A Well, if Major Torres follows the policy,  
 22 then I would believe that Major Torres would follow  
 23 what the policy says about exigent circumstances.  
 24 Q Do you have recollection of what he told you  
 25 in either your first training with the TASER or your

46 (Pages 178 to 181)

Page 182

1 refresher course training?

2 A No, sir, I don't.

3 Q Okay. Was there ever a discussion that you  
4 could have an unlimited number of applications for an  
5 unlimited amount of seconds as long as you perceived  
6 the danger to continue to exist?

7 A Again, I would have to refer back to what the  
8 policy says before I can tell you if there was anything  
9 that stated that.

10 Q You don't remember him saying anything in  
11 either course?

12 A No, sir. I mean, I don't -- I don't remember  
13 exactly word for word what was stated.

14 Q In either course, did you all have  
15 hypotheticals where a fact situation was set out and  
16 the class was asked to discuss is that excessive or is  
17 that not?

18 A I don't recall.

19 Q Never had -- never done that in any course?

20 A I never said that I didn't. I said I don't  
21 recall.

22 Q I understand.  
23 I'm asking you have you ever done that in any  
24 other course?

25 A I don't know. I don't remember.

Page 183

1 Q Okay. Was there ever any discussion on  
2 either course on the use of a conducted energy weapon  
3 about a hypothetical fact situation and the number of  
4 applications or the number of seconds?

5 A Again, I just told you. I just answered the  
6 same question.

7 MR. WILLIAMS: If you don't know, you can say  
8 that.

9 THE WITNESS: I don't recall.

10 MR. WILLIAMS: That's fine.

11 BY MR. SPURLIN:

12 Q Okay. Have you ever discussed that with  
13 anyone else with the sheriff's department in any  
14 official capacity or any training session?

15 A Not that I recall.

16 Q Okay. All right. Do you remember having any  
17 discussion with Major Torres about the recommendation  
18 of a 15 second limitation?

19 MS. NGUYEN: Object to form and foundation.

20 THE WITNESS: I believe that's in the policy.

21 BY MR. SPURLIN:

22 Q Okay. That that is the recommendation?

23 A I'm sorry. I believe that is in TASER's  
24 policy.

25 Q That is the recommendation from Axon,

Page 184

1 correct?

2 A I would --

3 MS. NGUYEN: Object to form.

4 THE WITNESS: I mean, I would have --

5 MR. WILLIAMS: Same object.

6 THE WITNESS: -- to read over the policy and  
7 tell you.

8 MR. SPURLIN: All right. What are you  
9 pointing at? Now, you can't coach the witness.

10 MR. WILLIAMS: No. He said he would need to  
11 look at the policy, so I was just pointing out --

12 MR. SPURLIN: No, he did not.

13 MR. WILLIAMS: -- where that portion is.

14 Yeah, he did.

15 MR. SPURLIN: He said he needed to look at  
16 the Axon training. The question on the floor --

17 MR. WILLIAMS: That's what I'm pointing to is  
18 the training.

19 THE WITNESS: On this.

20 MR. SPURLIN: What exhibit do you have in  
21 front of you?

22 MR. WILLIAMS: It's the TASER -- what you  
23 were just referring to.

24 THE WITNESS: Exhibit 8.

25 MR. WILLIAMS: The TASER warnings.

Page 185

1 MR. SPURLIN: What exhibit number is that?

2 Is that a hard question to answer?

3 MR. WILLIAMS: I don't know, man.

4 THE WITNESS: It's Exhibit 8.

5 MR. WILLIAMS: This one's Exhibit 8.

6 MR. SPURLIN: All right.

7 BY MR. SPURLIN:

8 Q Tell me what was just pointed out to you.  
9 Let me see it.

10 A He pointed out No. 1, "Minimize the number  
11 and duration of CEW exposures."

12 Q Okay. And keep reading. "Most human CEW lab  
13 testing has not exceeded 15 seconds"?

14 A Yes, sir.

15 Q "And none has exceeded 45 seconds," correct?

16 A Yes, sir.

17 Q Then the recommendation from Axon is use the  
18 shortest duration objectively reasonable, correct?

19 A But let's --

20 MR. WILLIAMS: Object to form.

21 THE WITNESS: But let's keep reading. "To  
22 accomplish lawful objectives."

23 BY MR. SPURLIN:

24 Q Okay. And if you will look --

25 MS. NGUYEN: What page is that?

47 (Pages 182 to 185)

Page 186

1 THE WITNESS: It's going to be page two.  
 2 BY MR. SPURLIN:  
 3 Q All right, sir. Okay. Let me go back where  
 4 I was.  
 5 Are there any -- excuse me. Strike that.  
 6 Does a citizen have a right to be free from  
 7 being drive stunned?  
 8 A Sir, I -- I mean --  
 9 MR. WILLIAMS: Object to form.  
 10 MS. NGUYEN: Join.  
 11 THE WITNESS: Do they have a right to be free  
 12 from being drive stunned?  
 13 BY MR. SPURLIN:  
 14 Q (Nodding head affirmatively.)  
 15 A Yes, sir.  
 16 Q You were aware and testified, I think, when  
 17 you were asked by Ms. Nguyen that you knew drive stun  
 18 was for pain compliance only, correct?  
 19 A Yes, sir.  
 20 Q It doesn't have the neuromuscular  
 21 incapacitation feature, correct?  
 22 A Correct.  
 23 Q Okay. And you agree that it's clearly  
 24 established that a person has a right to be free from  
 25 an officer utilizing any type of force just to cause

Page 187

1 pain, correct?  
 2 MR. WILLIAMS: Object to form.  
 3 THE WITNESS: I never stated that.  
 4 BY MR. SPURLIN:  
 5 Q I'm asking you. You disagree with what I  
 6 said?  
 7 A I do disagree with that.  
 8 Q Okay. Well, the purpose of any use of force  
 9 is to obtain compliance, correct?  
 10 A That is correct.  
 11 Q It is not to inflict pain, correct?  
 12 A I don't --  
 13 MR. WILLIAMS: Object to form.  
 14 THE WITNESS: I don't agree with that because  
 15 you have pain compliance.  
 16 BY MR. SPURLIN:  
 17 Q Okay.  
 18 A I mean, that's actually a defensive tactic  
 19 technique that we're taught.  
 20 Q Okay. So if you have control of a person,  
 21 you agree that person is entitled to be free from any  
 22 type of force you would utilize just to cause them  
 23 pain?  
 24 MR. WILLIAMS: Object to form.  
 25 MS. NGUYEN: Join.

Page 188

1 THE WITNESS: Can you elaborate on -- you  
 2 said if you have control.  
 3 BY MR. SPURLIN:  
 4 Q Right.  
 5 A Okay. Can you elaborate on control and what  
 6 you mean by having control?  
 7 Q Okay. Well, let's assume you have someone  
 8 handcuffed.  
 9 A Okay.  
 10 Q You can't just go up and kick them? You would  
 11 agree that would be excessive force?  
 12 A I would agree that you can't just go up and  
 13 kick somebody --  
 14 Q Okay.  
 15 A -- that you have handcuffed for no reason.  
 16 Q And if you have them handcuffed and under  
 17 control, you can't hit them upside the head?  
 18 MR. WILLIAMS: Object to form.  
 19 MS. NGUYEN: Join.  
 20 BY MR. SPURLIN:  
 21 Q You agree that would be clearly excessive?  
 22 A If I just walk up and hit them in the head  
 23 for no reason?  
 24 Q Right.  
 25 A Yeah. Absolutely.

Page 189

1 Q Okay. And if you have control of someone,  
 2 that you can't drive stun them just because they happen  
 3 to hit you, correct?  
 4 MR. WILLIAMS: Object to form.  
 5 THE WITNESS: Again, you're not really  
 6 defining to me what you mean by having control of  
 7 someone.  
 8 BY MR. SPURLIN:  
 9 Q I just want you to assume for the purpose of  
 10 the question that you have control. If you have  
 11 control --  
 12 A Okay. But your definition of --  
 13 MR. WILLIAMS: We don't know what that means.  
 14 THE WITNESS: -- having control --  
 15 MR. WILLIAMS: Object to form.  
 16 THE WITNESS: -- might be different than  
 17 mine.  
 18 BY MR. SPURLIN:  
 19 Q Okay.  
 20 A You know, I would like to know what you  
 21 determine to be having control to be able to  
 22 appropriately answer that question.  
 23 Q Okay. Well, do you believe that you and  
 24 Spurgeon had control of McBrayer when you had one of  
 25 his hands, you were holding him by his neck down in the

48 (Pages 186 to 189)



Page 190

1 dirt and Spurgeon has his weight upon him? Did you  
2 have control of him at that time?

3 MR. WILLIAMS: Object to form.

4 MS. NGUYEN: Join.

5 THE WITNESS: I don't agree that -- that's  
6 not my recollection of the events.

7 BY MR. SPURLIN:

8 Q Okay. Is it your testimony that you never  
9 had control of McBrayer until the other deputies  
10 arrived?

11 A I would agree with that.

12 Q Okay. So would it be your testimony that for  
13 ten minutes that we had him on the ground he was not  
14 under control?

15 MR. WILLIAMS: Object to form.

16 THE WITNESS: I would say that he's not under  
17 control because I didn't have control of his  
18 hands.

19 BY MR. SPURLIN:

20 Q Well, let's talk about that. Spurgeon had  
21 one hand, correct?

22 A You would have to ask Deputy Spurgeon about  
23 that.

24 Q Okay.

25 A I don't know. I mean, I don't --

Page 191

1 Q Well, you testified to it this morning. You  
2 said detective -- you said Deputy Spurgeon had one hand  
3 and the other hand was underneath him and I could not  
4 get it out to handcuff him.

5 A Okay.

6 Q Is that not what you said?

7 A Yes, sir. So I'll agree with that. Deputy  
8 Spurgeon had one hand, yes, sir.

9 Q Okay. And you had the other, you just did  
10 not have it behind his back, correct?

11 MR. WILLIAMS: Object to form.

12 THE WITNESS: There was --

13 MS. NGUYEN: Join.

14 THE WITNESS: -- at some point that I  
15 couldn't have had a hand on his arm because you're  
16 claiming that I had one on his neck and there was  
17 one on his back.

18 BY MR. SPURLIN:

19 Q I don't think I've said you had one hand on  
20 his neck and one hand on his back at the same time.  
21 I've never said that.

22 A Okay.

23 Q I've never said that.

24 A I disagree that I -- that I had control of  
25 his arm at all points, at all times.

Page 192

1 Q I didn't ask you at all times.

2 Did you ever have control of his hand?

3 MR. WILLIAMS: Object to form.

4 THE WITNESS: I don't know that. I don't  
5 know.

6 BY MR. SPURLIN:

7 Q Okay. And it's your testimony that when he  
8 was on the ground and you were holding him by his neck  
9 and Spurgeon had one hand, he was not under control?

10 MR. WILLIAMS: Object to form.

11 Go ahead.

12 THE WITNESS: Again, I don't -- I don't think  
13 he was under control until we actually got him in  
14 handcuffs.

15 BY MR. SPURLIN:

16 Q Okay. And was he under control once he was  
17 handcuffed?

18 A It is my belief that, yes, he would have been  
19 under control after that point.

20 Q Okay. So you would agree that the law is  
21 clearly established that at that point when he's  
22 handcuffed, no one could inflict pain on him?

23 MR. WILLIAMS: Object to form.

24 THE WITNESS: No, sir. Again, I'm telling  
25 you that my perception is he was under control at

Page 193

1 that point.

2 BY MR. SPURLIN:

3 Q I understand.

4 At that point, was there any reason for any  
5 deputy to inflict pain on him at that point?

6 A Sir, I can't speak for other deputies. I can  
7 speak for me.

8 Q Okay.

9 A And I don't think that it would have been  
10 reasonable for me to inflict unnecessary pain, no.

11 Q Okay. Once he was handcuffed, you believe  
12 that there should have been no further use of force  
13 with respect to him; is that correct?

14 A That's correct.

15 Q Okay. All right. And can a person be under  
16 control by a deputy without being handcuffed?

17 MR. WILLIAMS: Object to form.

18 THE WITNESS: Yes.

19 BY MR. SPURLIN:

20 Q Under what circumstances?

21 MR. WILLIAMS: Object to the form.

22 THE WITNESS: I mean, there's a lot of  
23 different -- there's a lot of different  
24 circumstances where you can be under control. I  
25 mean, if you're compliant and you're doing the

49 (Pages 190 to 193)

Page 194

1 things that I asked you to do, it's reasonable  
2 that you're under control because you're complying  
3 to directives.

4 THE VIDEOGRAPHER: Hold on. Can we go off  
5 the record?

6 MR. SPURLIN: Uh-huh.

7 THE VIDEOGRAPHER: The time is 3:04. We're  
8 going off the record.

9 (Whereupon, a recess was taken.)

10 THE VIDEOGRAPHER: The time is 3:05. We're  
11 back on the record.

12 BY MR. SPURLIN:

13 Q All right. Have you ever been given any  
14 training that you need to balance the government  
15 interests against the nature and quality of the force  
16 utilized?

17 A Can you elaborate what you mean by that?

18 Q I think that's the whole line of questions I  
19 asked you earlier. You can't use deadly force if the  
20 only crime the guy's committed is a traffic violation,  
21 correct?

22 MR. WILLIAMS: Object to form.

23 THE WITNESS: Yes, sir, I would have -- yes.

24 BY MR. SPURLIN:

25 Q That's balancing the government interest --

Page 195

1 A Okay.

2 Q -- how dangerous the person is versus the  
3 type of force that you're going to use, right?

4 A Yes, sir.

5 Q The same hypothetical you answered, the need  
6 to arrest someone for a traffic ticket and endangering  
7 an entire subdivision of children would be clearly  
8 excessive? You can't chase them through the  
9 subdivision in that factual situation, correct?

10 A Correct.

11 MR. WILLIAMS: Object to form.

12 BY MR. SPURLIN:

13 Q Generally that's what you do? You balance  
14 the nature of the force you're going to use with the  
15 government interest in getting the guy, right?

16 A Yes.

17 Q I got you.

18 Okay. Now, I want to ask you something about  
19 this TASER training. When you first came on board, did  
20 the sheriff's department utilize TASERS regularly?

21 A As far as I know, yes, sir.

22 Q Okay. Was there any change in policy or push  
23 to utilize more TASERS or to equip deputies with more  
24 TASERS?

25 MR. WILLIAMS: Object to the form.

Page 196

1 THE WITNESS: I mean, I can't speak to that.

2 BY MR. SPURLIN:

3 Q Okay. There's a document that your lawyer  
4 has provided that shows that shortly before your  
5 training, I believe, in October, the sheriff's  
6 department purchased 50 TASERS.

7 Do you have any knowledge of that?

8 A No, sir.

9 Q Okay. Was there any instruction from above  
10 that said you all need to go get your TASER training,  
11 we just bought 50 of these and you all need to know how  
12 to use them?

13 A Not that I would have been privy to.

14 Q Okay.

15 A No, sir.

16 Q The time is why I asked the question.

17 Shortly after those were purchased, a lot of  
18 you all went through that training on December 18th,  
19 2018?

20 A Yes, sir.

21 Q But you never were told you needed to do that  
22 or that needs to be part of what you take this year?

23 A I mean, I was told be at training on this  
24 day, I mean.

25 Q Okay. So it wasn't an elective course? You

Page 197

1 were told to be there and you were?

2 A Yes, sir.

3 Q Was it the policy that every officer and  
4 deputy had to be trained in how to use a TASER?

5 A The only thing that I'm aware of is if you're  
6 going to carry a TASER, you have to be trained to use  
7 it.

8 Q Okay.

9 A I don't know if there was ever a policy  
10 stating that you have to do it.

11 Q Is there a policy that every patrol deputy  
12 has to carry a TASER?

13 A Not that I'm aware of.

14 Q And what is your current title?

15 A A traffic deputy.

16 Q Is there a policy that every traffic deputy  
17 has to carry a TASER?

18 A Not that I'm aware of, no, sir.

19 Q But who told you be there on December 18th  
20 for this training?

21 A It would have been my supervisor, whoever  
22 that was at the time.

23 Q Okay. Now, generally law enforcement  
24 personnel have to have so many hours of training each  
25 year; is that correct?

50 (Pages 194 to 197)

Page 198

1 A Yes, sir.  
 2 Q And what do you all call it, continuing  
 3 education?  
 4 A It's just annual required training that I  
 5 know of.  
 6 Q Do you know how many hours it is?  
 7 A No, sir, I'm not -- I'm not sure.  
 8 Q Okay. And typically would you have the right  
 9 to choose what hours you pick? What classes you pick?  
 10 A No, sir. Tift County Sheriff's Office,  
 11 they -- they tell us when to be there and what training  
 12 we're doing.  
 13 Q I see. I see.  
 14 And if you want to, you can look at  
 15 Defendants' Exhibit No. 5 with me.  
 16 A Yes, sir.  
 17 Q Does this appear to be your training through  
 18 June 28th of 2019?  
 19 A It does.  
 20 Q Okay. All right, sir. And if you'll look at  
 21 the second page, December 18th is the first time you  
 22 ever had any TASER certification training, correct?  
 23 A Correct.  
 24 Q Okay. And you received eight hours; is that  
 25 right?

Page 200

1 portion, the tactical portion.  
 2 I'm assuming they taught you how to handle  
 3 the weapon; is that right?  
 4 A Yes, sir.  
 5 Q How to holster and arm it and how to use the  
 6 trigger, right?  
 7 A Yes, sir.  
 8 Q And part of that was a discussion?  
 9 A Yes, sir.  
 10 Q And then part of it they let you shoot; it is  
 11 that right?  
 12 A We were required to shoot two cartridges,  
 13 yes.  
 14 Q Okay. And you were trained on how you were  
 15 supposed to shoot it?  
 16 A Yes.  
 17 Q And how you were supposed to target it?  
 18 A Yes.  
 19 Q The stance and everything?  
 20 A Yes, sir.  
 21 Q Okay. And then did everyone who participated  
 22 in your course also allow themselves to be shot?  
 23 A No. You're not shot with the TASER. We  
 24 actually -- they clip it to you.  
 25 Q They clip it to you?

Page 199

1 A Yes, sir.  
 2 Q Do you have any recollection of the class?  
 3 A No, sir, I don't.  
 4 Q Do you have any recollection of anything  
 5 specifically that Major Torres told you?  
 6 A No, sir, I don't.  
 7 Q Okay. Did you all just go through and you  
 8 watched the slides? Is that all that it consisted of?  
 9 MS. NGUYEN: Object to form.  
 10 THE WITNESS: Again, sir, I just told you I  
 11 don't remember exactly what was stated.  
 12 BY MR. SPURLIN:  
 13 Q The classroom portion, how many hours of the  
 14 eight hours was it, as opposed to the actual use of the  
 15 weapon?  
 16 A Sir, that would be a Major Torres question.  
 17 Q Okay. You don't remember?  
 18 A No, sir.  
 19 Q Was it all done on one day or was it done on  
 20 two days?  
 21 A My recollection is it was done on one.  
 22 Q Okay. And do you recall if the classroom  
 23 portion was first?  
 24 A Yes, sir.  
 25 Q Okay. All right. Let's go to the second

Page 201

1 A Yes, sir.  
 2 Q Okay. And so did everyone allow them to have  
 3 it applied to them?  
 4 A I did. I can't speak for everybody else in  
 5 the class.  
 6 Q There were some others who did?  
 7 A Yes. I mean, there were other people that --  
 8 yes. There were other people that had voluntary  
 9 exposure. I can't attest that everybody did.  
 10 Q Okay. Were the voluntary exposures all done  
 11 at the same time? Like they do --  
 12 A They were all done the same day.  
 13 Q Tripp first, they do Spurgeon later, all at  
 14 the same --  
 15 A Yes, sir.  
 16 Q Okay. And do you remember how long the  
 17 classroom portion was?  
 18 A I don't.  
 19 Q Okay. Now, did Major Torres give you any  
 20 training other than going through the slides?  
 21 A I don't -- I don't remember.  
 22 Q Okay. Did he allow questions?  
 23 A I'm not sure. I'm -- I would be speculating.  
 24 I don't remember.  
 25 Q Okay. Did he go through any hypothetical

51 (Pages 198 to 201)

Page 202

1 fact situations to talk about what you should or should  
2 not do in those hypothetical fact situations?

3 A I don't remember.

4 Q Okay. All right. Ms. Nguyen used Exhibit 6  
5 that has only a portion of these slides. I've got a  
6 much bigger exhibit. The one that she has apparently  
7 has 94 separate slides.

8 Is that consistent with what you remember or  
9 do you just not remember anything?

10 A I mean, I remember it was a lengthy  
11 PowerPoint. I don't remember exactly how many slides  
12 it was.

13 Q Okay. When you all had training at the  
14 sheriff's department, do you take notes?

15 A Sometimes. It depends on the class.

16 Q Did you have to take an exam that day or was  
17 it later?

18 A It was that day.

19 Q Okay. And did you take it immediately after  
20 the coursework with the teacher or did you do it after  
21 the application section?

22 A No, sir. We did it after the classroom  
23 instruction.

24 Q Okay. Were you allowed any materials out  
25 when you took the test?

Page 203

1 A No, sir.

2 Q Do you remember any of the questions?

3 A I don't.

4 Q Do you remember your grade?

5 A No, sir.

6 Q Okay. Do you know if there's a specific  
7 number grade you have to have to pass it?

8 A I'm not sure. I don't know how the grading  
9 works on it.

10 Q All right, sir. Now, the TASER exhibit that  
11 was utilized, I want to go through that with you for  
12 just a minute, Defendants' Exhibit No. 3.

13 A Yes, sir.

14 Q Do you recall if this was the same TASER that  
15 you had from the start or did someone else have it  
16 before you got it? Does that make sense to you?

17 A I wouldn't know the answer to that question.

18 Q The reason I ask it is -- I'll tell you what  
19 it looks like to me. If you'll look on the first page  
20 of Exhibit 3, it shows that on September 30th, 2018,  
21 the trigger was pulled one, two, three, four, five,  
22 six, seven, eight, nine, ten, 11, 12, 13, 14 times  
23 almost in succession from 6:46 to 6:47.

24 Do you see that?

25 A I do.

Page 204

1 Q Would that suggest to you that that's  
2 somebody in the field using that or was that somebody  
3 in a class?

4 MS. NGUYEN: Object to the form and  
5 foundation.

6 THE WITNESS: I mean, it could be -- it could  
7 be a number of things. I don't know. I can't  
8 answer that.

9 BY MR. SPURLIN:

10 Q Do you know if that was you pulling the  
11 trigger all those times on September 30, 2018?

12 A No, sir, I don't.

13 Q Okay. Now, if you weren't trained until  
14 December 18th, 2018, that would tell me that this  
15 wasn't you; is that fair?

16 A I think that's a fair assessment.

17 Q All right. You never utilized it until you  
18 were trained, correct?

19 A That is correct.

20 Q So this one was used by somebody else on that  
21 date, right?

22 A Yes, sir.

23 Q Is there any way for us to know when this was  
24 issued to you?

25 A I wouldn't know the answer to that question.

Page 205

1 Q Do you know if you had ever utilized this  
2 particular model before the episode with Mr. McBrayer?

3 A You're talking about have I ever used it in  
4 what capacity?

5 Q All right. That's a good question.

6 In the field have you ever utilized it?

7 A As far as deploying it against a person?

8 Q Yes.

9 A I've never deployed a TASER against a person  
10 at all before this incident.

11 Q Thank you.

12 Have you since?

13 A No, sir.

14 Q Okay. So in your life as a deputy here and  
15 Omega and in Lenox, this is the only time you've ever  
16 utilized a TASER weapon; is that correct?

17 A That is correct.

18 Q Have you ever pulled and aimed the TASER  
19 weapon at anybody?

20 A I have.

21 Q Okay. How many times have you done that?

22 A I don't know for sure. I can think of two  
23 other instances where I did right off the top of my  
24 head, but that's --

25 Q Let's talk about those two incidents.

52 (Pages 202 to 205)

Page 206

Page 207

1 A Okay.  
 2 Q Were they both after the McBrayer episode?  
 3 A One of them was. I don't know if the first  
 4 one was or not. I don't recall.  
 5 Q All right. Describe the first one that you  
 6 can recall to me.  
 7 A Yes, sir. The first one that I recall is we  
 8 were going into a house to serve a warrant. The  
 9 individual that we were serving the warrant on we knew  
 10 was in the house. We got confirmation from somebody  
 11 else that he was already in the house.  
 12 He had a violent history with law  
 13 enforcement. So when we went into the house, I went in  
 14 with my TASER already out. And the deputy behind me  
 15 went in -- went in with lethal force, already out. And  
 16 when we made contact, he was not compliant. I aimed my  
 17 TASER at him, and we gained compliance that way.  
 18 Q You said the second deputy had lethal force  
 19 out. What do you mean by that?  
 20 A He had his duty weapon drawn.  
 21 Q Okay. So he had his pistol drawn?  
 22 A Yes, sir.  
 23 Q Do you not believe the TASER is lethal force?  
 24 A I believe it is a less lethal means, but I do  
 25 believe that it can be lethal, yes.

1 Q And who was the other deputy with you?  
 2 A I don't -- I don't remember that.  
 3 Q Okay. And do you know who the person you  
 4 were trying to control was?  
 5 A No, sir, I don't remember his name either.  
 6 Q All right. And would it be fair to say the  
 7 reason you had your weapon drawn was that he had a  
 8 history of violence?  
 9 A I would say that a history of violence. The  
 10 fact that he was hiding in the residence, not complying  
 11 to our commands to come out.  
 12 Q Okay. I didn't hear you say that earlier.  
 13 That's why I asked.  
 14 A I'm sorry. I didn't.  
 15 Q Okay. What were the reasons why you had your  
 16 weapon drawn and aimed before you entered?  
 17 A Yes, sir. Number one, he was hiding in the  
 18 house. We knew that he was in the house. He actually  
 19 told the person, the homeowner, not to let us in. He  
 20 had a violent history with law enforcement.  
 21 Q What type?  
 22 A As far as -- I'm sorry, he had a combative  
 23 history, not necessarily a violent history, where he  
 24 would try to flee and he would -- you know, he would  
 25 push past us, if he needed to, to get out of the house,

Page 208

Page 209

1 things like that.  
 2 Q You mean he had a history of fleeing?  
 3 A No, sir. He had a history of being  
 4 aggressive in nature.  
 5 Q Ever strike a law enforcement officer?  
 6 A I don't remember.  
 7 Q I'm trying to distinguish by what you mean by  
 8 combative versus violent, because you said --  
 9 A Yes, sir.  
 10 Violent, I don't mean that he -- he would try  
 11 to avoid confrontation. However, once we get our hands  
 12 on him, he will, you know, pull away from us, push us  
 13 away from him, things of that nature.  
 14 Q Did you have your weapon armed that day?  
 15 A Yes, sir.  
 16 Q Okay. And when did you --  
 17 MS. NGUYEN: Weapon, are you referring to the  
 18 TASER?  
 19 MR. SPURLIN: That's the weapon he said he  
 20 had. Yes, ma'am.  
 21 BY MR. SPURLIN:  
 22 Q And did you all knock and say Tift County  
 23 Sheriff's Department, we have a search warrant?  
 24 A It wasn't a search warrant. It was an arrest  
 25 warrant.

1 Q Oh, you said search warrant. But anyway,  
 2 that's okay. I thought you said --  
 3 A I'm sorry. It was an arrest warrant.  
 4 Q It was an arrest warrant, okay.  
 5 A We made contact with the homeowner, yes.  
 6 Q And were you all able to arrest him that day?  
 7 A We did.  
 8 Q Okay. All right. What about the second  
 9 incident?  
 10 A The second incident, we had an individual at  
 11 a business. He was under the influence of -- suspected  
 12 to be under the influence of drugs. He was acting  
 13 irrational.  
 14 We went in. We tried to talk to him. He  
 15 actually pushed one of my other deputies. I drew my  
 16 TASER, and I armed my TASER. I pointed it at him. I  
 17 never deployed it in that situation either, not because  
 18 he complied, but because I didn't -- I didn't -- I  
 19 couldn't safely deploy it.  
 20 Q You said "we"?  
 21 A Yes.  
 22 Q Who were the --  
 23 A Myself and another deputy.  
 24 Q And who was that?  
 25 A Deputy Bello. He's on my shift.

53 (Pages 206 to 209)



Page 210

1 Q And was that after the incident with  
2 McBrayer?

3 A Yes, sir.

4 Q Okay. And you said the person was acting  
5 irrational. Describe that to me.

6 A This gentleman was -- he was pacing around  
7 the room. He wasn't complying with orders. He -- you  
8 know, we actually at one point tried to detain him. He  
9 shoved my other deputy away from him, and then he  
10 jumped out a window.

11 Q Is that the irrational behavior, shoving the  
12 deputy?

13 A Well, the irrational behavior is not  
14 complying with the commands, shoving the deputy.

15 Q Okay. Is not -- is not complying with a  
16 command irrational behavior in your mind?

17 A I don't think that a rational person would  
18 not comply.

19 Q Okay. Did he do anything else other than not  
20 complying that made you believe he was acting  
21 irrationally?

22 A I mean, there was numerous events that  
23 happened. I mean, I can get the report, if you would  
24 like to see it.

25 Q Okay. What -- was it your practice that when

Page 211

1 you pulled the weapon that you automatically arm it or  
2 do you pull it and then wait to see what circumstances  
3 dictate?

4 A No, sir. Typically if I -- if I get to the  
5 point where I feel that I need to draw my TASER, I go  
6 ahead and arm it.

7 Q Okay.

8 A Just because if they're -- if I'm at the  
9 point where I feel like I need to draw my TASER from  
10 the holster, then I believe there is a possibility I  
11 may need to use it, and I don't want to take the time  
12 that it would take to lift it from beside me.

13 Q Have you ever drive stunned anyone?

14 A Not that I can recall, no, sir.

15 Q Okay. Do you remember what your training  
16 about using drive stun was from Major Torres?

17 A Can you be specific?

18 Q I mean, did he give you any circumstances  
19 when you should or should not drive stun someone?

20 A Not that I recall. I know we discussed the  
21 drive stun and the purpose of it and things of that  
22 nature. But I don't recall any situations because a  
23 situation is not dictated by a specific action. It's  
24 dictated by the totality of the circumstances.

25 So for me to sit here and say, well, if

Page 212

1 somebody does this, you need to do this, that is not  
2 practical in law enforcement.

3 Q Okay.

4 A And especially when you're talking use of any  
5 weapons.

6 Q Is drive stun a lesser effective technique  
7 than actually shooting and applying the prongs and the  
8 electrical force?

9 A Yes, sir.

10 Q Okay. Were you ever given any instructions  
11 about do not repeat drive stun?

12 A No, sir, I've never heard that.

13 Q Okay. Were you ever given any instruction in  
14 your training on December 18, 2018 about target area  
15 that you should aim for?

16 A Yes, sir.

17 MR. WILLIAMS: In a drive stun?

18 MR. SPURLIN: No.

19 MR. WILLIAMS: Okay. Object to form. It's  
20 unclear.

21 BY MR. SPURLIN:

22 Q Let me ask again. In the use of the TASER  
23 with the prongs and the electrical force to  
24 incapacitate muscularly, were you ever given any  
25 instructions on the target areas?

Page 213

1 A Yes, sir.

2 Q What?

3 A Target areas, I mean, typically -- typically  
4 your target area would be the back, if you can get  
5 that. However, that's not practical in most  
6 situations.

7 So there are places that you try to avoid,  
8 the groin area, the head, the center of the chest,  
9 things of that nature are areas that you try to avoid  
10 if you can.

11 Q Okay. The groin, the head area, and the  
12 center of the chest?

13 A Yes, sir.

14 Q Were you ever told what the prime target area  
15 was for someone advancing towards you?

16 A I don't -- I don't think there's an  
17 optimal --

18 Q Okay. What --

19 A -- area.

20 Q What were you told about why you should avoid  
21 the chest area?

22 A Well, you want to avoid the chest area  
23 because of the heart.

24 Q Okay. Were you trained that the electrical  
25 impulses could have an effect on someone's heart?

54 (Pages 210 to 213)

Page 214

1 A Yes, typically with a preexisting condition.  
 2 Q And you were told that could be a negative  
 3 effect?  
 4 A Yes.  
 5 Q That could cause sudden death?  
 6 A Yes.  
 7 Q And it could cause the heart to race?  
 8 A Yes.  
 9 Q Which would increase someone's exhaustion if  
 10 they were also exerting themselves, correct?  
 11 MS. NGUYEN: Object to form and foundation.  
 12 THE WITNESS: I don't know that to be a fact.  
 13 BY MR. SPURLIN:  
 14 Q If someone's tired, having already run for  
 15 ten minutes or exerted themselves for ten minutes, and  
 16 the electrical impulse speeds the heart up even  
 17 further, do you need medical training to know that  
 18 that's going to be bad for them?  
 19 MR. WILLIAMS: Object to form.  
 20 MS. NGUYEN: Object to form and foundation.  
 21 THE WITNESS: I mean, I -- I don't know  
 22 what's good. I don't know.  
 23 BY MR. SPURLIN:  
 24 Q When you decided to deploy at McBrayer, what  
 25 area did you target?

Page 215

1 A Honestly, I didn't have a specific target  
 2 area in mind because he was advancing towards me so  
 3 rapidly.  
 4 Q Okay. Do you remember when you were deposed  
 5 by Mr. Webster in the previous case? I'm going to hand  
 6 you this.  
 7 A Yes, sir.  
 8 Q Okay. I want you to turn with me to page 40.  
 9 And if you'll look with me on page 40, I'm going to  
 10 read some. Reading page 40, line 16:  
 11 "So you hit him in the chest area with the  
 12 prongs, if they hit, the front, they call it interior,  
 13 but the front chest area?"  
 14 "ANSWER: Yes, sir.  
 15 "Okay. Have you seen the autopsy in this  
 16 case?  
 17 "I have not."  
 18 And then he says, "I'll tell you that the  
 19 autopsy report reflects two different prong injuries  
 20 from the TASER to his chest."  
 21 I'm going to stop there.  
 22 A Okay.  
 23 Q So far have I read that accurately?  
 24 A Yes, sir.  
 25 Q And Ms. Nguyen asked you this morning about

Page 216

1 the autopsy and marked it as an exhibit, correct?  
 2 A Yes, sir.  
 3 Q And the two prongs were both in his chest  
 4 area, correct?  
 5 A Yes, sir.  
 6 Q One was 23 inches from the top of his head  
 7 and one was 18 and a half inches from the top of his  
 8 head, correct?  
 9 A No, sir.  
 10 Q You have no doubt you shot him in the chest  
 11 area, correct?  
 12 MR. WILLIAMS: Object to form.  
 13 MS. NGUYEN: Join.  
 14 THE WITNESS: According to -- according to  
 15 the autopsy report and my recollection, yes.  
 16 BY MR. SPURLIN:  
 17 Q Okay. Now I want you to look at page 41 with  
 18 me. I'm reading about line 12.  
 19 "QUESTION: Did you intend to hit him in the  
 20 chest or was that just kind of how it happened?  
 21 "ANSWER: My intention was, yes, for one of  
 22 the prongs to go toward the chest area."  
 23 Did I read that accurately?  
 24 A You did.  
 25 Q Okay. Now, I'm going to skip down for right

Page 217

1 now. Look at line 25. Your answer went -- continued.  
 2 "Ideally, I would want one toward the chest  
 3 area and maybe one lower on the stomach area if I'm  
 4 going to tase somebody from the front."  
 5 A Yes, sir.  
 6 Q Did I read that accurately?  
 7 A You did.  
 8 Q Now, this deposition was taken much closer in  
 9 time to the event than today, correct?  
 10 A Yes, sir.  
 11 Q It was taken about a year and six months  
 12 after the event, correct?  
 13 A Yes, sir.  
 14 Q And you understood the question did you aim  
 15 for the chest area when you said, "My intention was,  
 16 yes, for one of the prongs to go to the chest area,"  
 17 right?  
 18 A Yes, sir.  
 19 Q And you, in fact, went further and said,  
 20 ideally, if you had a choice when shooting someone from  
 21 the front, you want to hit them one time in the chest  
 22 and one time lower on the stomach area, correct?  
 23 A That is what I stated, yes, sir.  
 24 Q And you had the right to say anything in the  
 25 world you wanted to say, and you said that was an ideal

55 (Pages 214 to 217)

Page 218

1 shot?  
 2 A Yes, sir.  
 3 Q One in the chest and one lower, correct?  
 4 A Yes, sir.  
 5 Q Okay.  
 6 MR. SPURLIN: We can take a break. He's got  
 7 to change --  
 8 THE VIDEOGRAPHER: I got to change tapes.  
 9 This is the end of medium number three in  
 10 the deposition of Deputy Anthony Tripp. The time  
 11 is 3:29. And we're going off the record.  
 12 (Whereupon, a recess was taken.)  
 13 THE VIDEOGRAPHER: This is the beginning of  
 14 medium number four in the deposition of Deputy  
 15 Anthony Tripp. The time is 3:37. We're on the  
 16 record.  
 17 BY MR. SPURLIN:  
 18 Q Deputy Tripp, we were talking about targeting  
 19 the chest area. Look with me at Defendants' Exhibit  
 20 No. 9 which was previously tendered. And turn, if you  
 21 will, to the top of the third page.  
 22 Do you see the little drawing -- and this  
 23 one's not in color -- where there are green areas for  
 24 preferred target areas and yellow areas for areas to  
 25 avoid?

Page 219

1 A Yes, sir.  
 2 Q And have you seen that and did you see that  
 3 in your training?  
 4 A Yes, sir, I have.  
 5 Q And you recall that the chest area was  
 6 yellow, to avoid, correct?  
 7 A Yes, sir.  
 8 Q And No. 1 for "To reduce risk of injury," you  
 9 should used preferred target areas. And it says,  
 10 "Lower center mass, parenthesis, below the chest,"  
 11 correct?  
 12 A Yes, sir.  
 13 Q And for sensitive areas, No. 2, it says,  
 14 avoid intentionally targeting sensitive areas "such as  
 15 the face, eyes, head, throat, chest area, parenthesis,  
 16 area of the heart" --  
 17 A Yes, sir.  
 18 Q -- "comma, breast."  
 19 Did I read that accurately?  
 20 A You did.  
 21 Q And that's how you where are trained by  
 22 Daniel Torres, correct?  
 23 A Yes, sir.  
 24 Q Okay. Yet you told Mr. Webster that ideally  
 25 you would always shoot one prong into the chest area,

Page 220

1 correct?  
 2 A I don't believe that I said always.  
 3 Q Ideally. What does ideally mean to you?  
 4 A Well, ideally means given the circumstances  
 5 that were presented.  
 6 Q Okay. Ideally means that's the best aiming  
 7 and shooting you can ever achieve? Ideally means the  
 8 best, right?  
 9 A That's your perception of it.  
 10 Q What does that mean to you?  
 11 A Again, I just told you ideally to me means  
 12 given the circumstances that were presented. That was  
 13 my target area because that's -- that's what I had.  
 14 Q All right.  
 15 (Plaintiffs' Exhibit No. 8 was marked for  
 16 identification.)  
 17 BY MR. SPURLIN:  
 18 Q Now, I'm going to show you what has been  
 19 marked as Plaintiffs' Exhibit No. 8 that's been  
 20 provided to me by Axon. I just want to identify a  
 21 bunch of documents.  
 22 MS. NGUYEN: By Axon? I don't think you got  
 23 this from me.  
 24 MR. WILLIAMS: What is it?  
 25 MR. SPURLIN: Maybe not.

Page 221

1 MR. WILLIAMS: Defendants' 8, you said?  
 2 MR. SPURLIN: Eight.  
 3 MS. NGUYEN: Yeah. It says a "Practical  
 4 Session Instructor Guide," Version 21, effective  
 5 January 14th, 2019. There's the exhibit.  
 6 Yeah, I haven't seen that before.  
 7 MR. WILLIAMS: Okay. So it's obviously after  
 8 when he received his training, but it's --  
 9 MR. SPURLIN: Okay.  
 10 MR. WILLIAMS: I don't know where this came  
 11 from.  
 12 MS. NGUYEN: What is the point of this?  
 13 MR. WILLIAMS: You can review it and testify  
 14 the best you can.  
 15 BY MR. SPURLIN:  
 16 Q The date on there says January 14th, 2019,  
 17 correct? That is before you had your refresher course,  
 18 correct?  
 19 A Yes, sir.  
 20 Q Okay. Now, turn with me to page 95, if you  
 21 would.  
 22 Now, in that one, there's the same drawing of  
 23 the man with green areas and yellow areas for sensitive  
 24 areas and preferred targets, correct?  
 25 A Yes, sir.

56 (Pages 218 to 221)

Page 222

1 Q And it actually says the preferred target is  
2 the green area, correct?

3 A It does.

4 Q And the yellow area in this case, it's his  
5 groin, his head and his chest, correct?

6 A Yes, sir.

7 Q And that is, in fact, where both of the  
8 prongs were on Mr. McBrayer, correct?

9 MR. WILLIAMS: Object to form.

10 THE WITNESS: In the yellow?

11 BY MR. SPURLIN:

12 Q Yes, sir. In his chest.

13 A My under -- my understanding is they were in  
14 that area, but I don't know exactly where.

15 Q All right. And if you turn with me to page  
16 109, again, it says, "Avoid face, throat, genitals,  
17 breast, chest or heart area," correct?

18 A It does.

19 Q Now, regardless of whether that was the  
20 document that you had when you were trained by Torres,  
21 that's the same training he gave you, right?

22 A I can't attest to that.

23 Q Well, you've already told me that he told  
24 you. And Exhibit No. 9, it says those same avoid  
25 areas, right?

Page 223

1 A Yes, sir.

2 But you're asking me if this specifically is  
3 what I was given by Major Torres, and I can't attest to  
4 that.

5 Q No, I didn't say that. I said that may not  
6 be the same document. But the same training to avoid  
7 the chest, throat, head and genital areas --

8 A Okay.

9 Q -- is the same that Torres gave you, right?

10 A Yes, sir.

11 Q And the green areas and the yellow areas is  
12 the same drawing that's on this one that Torres gave  
13 you, right?

14 A Yes, sir.

15 Q Just like your attorney compared the two  
16 documents when Ms. Nguyen was questioning you, that  
17 information has not changed?

18 A Right.

19 Q The same training that's in that one is the  
20 training Torres gave you in December of 2018, right?

21 MR. WILLIAMS: Object to form.

22 THE WITNESS: In regards to that specific  
23 question, yes.

24 (Plaintiffs' Exhibit No. 10 was marked for  
25 identification.)

Page 224

1 BY MR. SPURLIN:

2 Q Right. Okay. Now, I want to just ask you --  
3 and we'll show you what's marked as Plaintiffs' Exhibit  
4 No. 10. It is a document that's similar to the one  
5 Spurgeon signed.

6 Do you recall being handed a document like  
7 that to acknowledge that you have read and understand  
8 the warnings of CEW drills when you went through the  
9 course with Torres?

10 MS. NGUYEN: Can I have -- take a look at it,  
11 please?

12 This is also Version 21, so this would have  
13 been effective January of 2019.

14 BY MR. SPURLIN:

15 Q The question is simple. Did you ask to sign  
16 a similar document to that when you went through the  
17 training with Daniel Torres?

18 A I did sign something similar. However,  
19 again, without my signed, I can't tell you. I can't  
20 attest that it was --

21 Q Okay.

22 A -- the same document.

23 Q And you have -- you should have a signed  
24 document at the Tift County Sheriff's Department?

25 A I mean, I should, yes.

Page 225

1 Q Okay.

2 (Plaintiffs' Exhibit No. 11 was marked for  
3 identification.)

4 BY MR. SPURLIN:

5 Q Okay. Let me show you what's marked as  
6 Plaintiffs' Exhibit No. 11. And this one doesn't have  
7 page numbers, so it's going to be a little more  
8 tedious.

9 If you'll turn, I think, to the third page.

10 MS. NGUYEN: Counsel, respectfully, if you're  
11 going to hand the witness a new exhibit, because  
12 you are not providing us copies, I need to be able  
13 to see it first so I know what you're questioning  
14 the witness about.

15 For the record, this is also Version 21  
16 effective January 14th, 2019.

17 MR. WILLIAMS: Let me see that. Which page  
18 were you --

19 MR. SPURLIN: The third one, course  
20 objectives.

21 MR. WILLIAMS: Course objectives. All right.  
22 Let me put this to the side.

23 BY MR. SPURLIN:

24 Q Now, the next to the last one says, "Explain  
25 probe placement and aiming requirements."

57 (Pages 222 to 225)

Page 226

1 That was part of the course Torres taught  
 2 you, correct?  
 3 MR. WILLIAMS: Object to form.  
 4 MS. NGUYEN: Join, and foundation.  
 5 THE WITNESS: I don't -- I mean, I don't know  
 6 that to be factual.  
 7 BY MR. SPURLIN:  
 8 Q Well, we've already gone through Exhibit 9.  
 9 A But you're asking me if this is what I was --  
 10 Q No.  
 11 A I don't know that.  
 12 Q I'm asking you was that the same thing that  
 13 he did? Did he go over and explain proper plobe --  
 14 probe placement and aiming requirements as part of your  
 15 training? Did he do that?  
 16 A I believe he would, yes.  
 17 Q And he explained to try to avoid the chest  
 18 area, correct?  
 19 A Yes, sir.  
 20 Q Did he explain to you why you should avoid  
 21 the chest slash heart area?  
 22 A Yes, sir. He did explain to me why you would  
 23 try to avoid that area.  
 24 Q And what did he explain?  
 25 A Well, he explained that the heart's in that

Page 228

1 A I mean, I guess we're --  
 2 MS. NGUYEN: Object to form and foundation.  
 3 MR. WILLIAMS: Object to form.  
 4 THE WITNESS: -- making an assumption that --  
 5 we're making an assumption that this is a document  
 6 that I signed. I don't know what the document I  
 7 signed says. So you're asking me to testify to  
 8 something that I don't know for a fact, and I'm  
 9 not going to do that.  
 10 BY MR. SPURLIN:  
 11 Q Okay. Well, I thought you had already  
 12 acknowledged to me that as part of the training Torres  
 13 made you sign something --  
 14 A Yes, sir.  
 15 Q -- saying that you read and understood and  
 16 would obey the training recommendations and warnings of  
 17 Axon.  
 18 Is that not true?  
 19 MR. WILLIAMS: Object to form.  
 20 MS. NGUYEN: Object to form and foundation.  
 21 THE WITNESS: And I explained to you that I  
 22 signed a document. I don't know what it said.  
 23 BY MR. SPURLIN:  
 24 Q Okay. All right. Well, look at your  
 25 Exhibit 9, which you have acknowledged that you had

Page 227

1 area and that the TASER can affect the heart rhythm.  
 2 Q Okay. Now, if you'll turn about eight or ten  
 3 pages into it, you're going to see one with a stop sign  
 4 on it.  
 5 Did he provide those warnings that the TASER  
 6 could cause death or serious injury?  
 7 A You're looking at TASER CEWs are not risk  
 8 free? Is that what you're looking at?  
 9 MS. NGUYEN: Yeah, it's the same.  
 10 BY MR. SPURLIN:  
 11 Q Yes. Yes. Yes.  
 12 A Okay. And you're asking if he covered that  
 13 they could cause death or serious injury?  
 14 Q Right.  
 15 A Yes, I believe that he would have covered  
 16 that.  
 17 Q And did he also discuss with you the fourth  
 18 item, that you needed to comply with the current  
 19 training materials and requirements?  
 20 A I can't state for a fact that he covered that  
 21 direct bullet.  
 22 Q Okay. But the document you were asked to  
 23 sign made you certify that you read and understand  
 24 those materials and that would you would obey them,  
 25 correct?

Page 229

1 when you had the training. Let's go back through it  
 2 again.  
 3 A Okay.  
 4 Q You said to me that you had this document.  
 5 A I never stated that.  
 6 MS. NGUYEN: Object to form and foundation.  
 7 MR. WILLIAMS: Object to form.  
 8 MS. NGUYEN: In fact, he said he didn't know  
 9 which one he had, whether it be Exhibit 8 or 9.  
 10 MR. SPURLIN: He had one. He said, I had one  
 11 of those documents.  
 12 MS. NGUYEN: Correct.  
 13 MR. SPURLIN: Let's don't recreate his  
 14 testimony.  
 15 MS. NGUYEN: No. No. No. You said -- you  
 16 are recreating his testimony. You said he had  
 17 Exhibit 9. What his testimony was that he didn't  
 18 know whether he had Exhibit 8 or 9.  
 19 BY MR. SPURLIN:  
 20 Q All right. Look with me at eight and nine.  
 21 A Yes, sir.  
 22 Q There's no need for this to be so tedious.  
 23 MS. NGUYEN: Well, don't misstate testimony  
 24 and it won't be.  
 25 MR. SPURLIN: I'm not.

58 (Pages 226 to 229)



Page 230

1 MS. NGUYEN: Yes, you did.  
 2 MR. SPURLIN: Don't coach him into what you  
 3 want him to say.  
 4 MS. NGUYEN: I am not coaching him at all.  
 5 What I'm asking is that you be honest with the  
 6 witness and not misstate testimony.  
 7 BY MR. SPURLIN:  
 8 Q Look at No. 8 and No. 9 side by side.  
 9 A Yes, sir.  
 10 Q Are No. 2 on those two identical?  
 11 A They do appear to be identical, yes.  
 12 Q Do they begin with the three words "Read and  
 13 obey"?  
 14 A Yes, sir.  
 15 Q And do they both say, "Read, comma,  
 16 understand and follow all current instructions,  
 17 warnings, and relevant TASER training materials"?  
 18 A They do.  
 19 Q And does it say, "Failure to do so could  
 20 increase the risk of death"? Does it say that?  
 21 A It does.  
 22 Q Did Daniel Torres ever tell you not to read,  
 23 obey, and follow the recommendations, instructions and  
 24 warnings that were given on this document?  
 25 A Not that I recall.

Page 232

1 THE WITNESS: You said when I completed the  
 2 training?  
 3 BY MR. SPURLIN:  
 4 Q In December of 2018 --  
 5 A Okay.  
 6 Q -- did you believe that you were proficient  
 7 in using the TASER and following the warnings and  
 8 instructions?  
 9 A I believe that I had a basic understanding.  
 10 Q A basic understanding?  
 11 A Yes, sir.  
 12 Q And did you have a basic understanding that  
 13 was sufficient to allow you to carry and utilize a  
 14 TASER weapon for the sheriff's department?  
 15 A I was authorized to carry a TASER, yes.  
 16 Q Okay. And did you believe that you fully  
 17 understood and could obey and follow the instructions  
 18 and training materials?  
 19 A Yes.  
 20 Q Was there any clarification that needed, in  
 21 your mind, before you left that course that day?  
 22 A No, sir.  
 23 Q Do you recall anyone asking Major Torres to  
 24 define excited delirium?  
 25 A I don't know.

Page 231

1 Q Okay. Did he in fact tell you that you  
 2 should follow those?  
 3 A I don't recall if he stated that.  
 4 Q Okay. All right. Now, you were asked on  
 5 direct examination by Ms. Nguyen about the term  
 6 "excited delirium."  
 7 Do you remember those questions?  
 8 A I don't.  
 9 Q Okay. Your testimony was I never knew what  
 10 excited delirium meant.  
 11 Is that true?  
 12 A I don't recall exactly what my response was.  
 13 Q Do you have a definition now of excited  
 14 delirium?  
 15 A No, sir.  
 16 Q Has anyone ever defined the term for you?  
 17 A Not that I recall.  
 18 Q Did Major Torres explain to you what the term  
 19 "excited delirium" meant?  
 20 A Not that I recall.  
 21 Q When you completed the course with Major  
 22 Torres in December of 2018, do you believe you had  
 23 proficiency at that time to understand the training  
 24 materials and warnings provided by Axon?  
 25 MS. NGUYEN: Object to form and foundation.

Page 233

1 Q Now, Mrs. Nguyen asked you the question if  
 2 you knew if that term was recognized by the AMA.  
 3 Do you remember those questions?  
 4 A Yes, sir.  
 5 Q And asked you if it was a recognized medical  
 6 term.  
 7 Do you remember those questions?  
 8 A Yes, sir.  
 9 Q Your answer was "I don't know," right?  
 10 A Correct.  
 11 Q The person who chose to use the word "excited  
 12 delirium" in this training materials was someone with  
 13 Axon, right?  
 14 MS. NGUYEN: Object to form and foundation.  
 15 THE WITNESS: I mean, I don't know who wrote  
 16 that policy.  
 17 BY MS. NGUYEN:  
 18 Q Okay. All right. And all of the training  
 19 material says on it from Axon, how to use their TASER,  
 20 right?  
 21 MS. NGUYEN: Are you referring to -- what  
 22 materials, warnings or the PowerPoint?  
 23 MR. SPURLIN: Every single document.  
 24 BY MR. SPURLIN:  
 25 Q Hasn't it been provided with the TASER

59 (Pages 230 to 233)

Page 234

1 weapons to the purchaser, Tift County Sheriff's  
2 Department?

3 MS. NGUYEN: No. What I'm asking -- object  
4 to form and foundation.

5 BY MR. SPURLIN:

6 Q Sir?

7 MR. WILLIAMS: Is that a question to him?

8 MR. SPURLIN: Yeah.

9 THE WITNESS: I'm sorry?

10 MR. WILLIAMS: I thought you were talking to  
11 her.

12 BY MR. SPURLIN:

13 Q The choice of what words to put in their  
14 warnings was made by Axon, right?

15 MS. NGUYEN: Object to form and foundation.

16 THE WITNESS: You have to ask Axon.

17 BY MR. SPURLIN:

18 Q And you left that course not knowing what  
19 excited delirium meant, right?

20 MR. WILLIAMS: Object to form.

21 THE WITNESS: I mean, that -- no, I didn't  
22 know what excited delirium was.

23 BY MR. SPURLIN:

24 Q And you still don't know?

25 A No, sir.

Page 235

1 Q And it gave you a warning that some people  
2 are particularly susceptible to TASERs and that you  
3 should avoid using them in those populations, correct?

4 A Yes, sir.

5 MR. WILLIAMS: Object to form.

6 MS. NGUYEN: Object. That mistakes the  
7 document. Object to form and foundation.

8 BY MR. SPURLIN:

9 Q But you -- you had no understanding of how  
10 you could identify those susceptible people who were  
11 suffering from excited delirium because you didn't know  
12 what it was?

13 A There's so much controversy against excited  
14 delirium right now that nobody knows what it is.  
15 Nobody can give a clear definition of what excited  
16 delirium is because doctors don't even agree what it  
17 is.

18 Q Well, what's the basis for that last  
19 statement? Where is your knowledge gained about the  
20 controversy about excited delirium and that no doctor  
21 can agree on what it is?

22 A Sir, I've done -- I've done research on  
23 excited delirium since this case and I've tried to  
24 research excited delirium.

25 Q Okay. What research have you done?

Page 236

1 A I mean, I've done Google searches. I don't  
2 know exactly what websites I've went to.

3 Q Did you print them?

4 A I don't have any need to, no.

5 Q Did you print them?

6 A No.

7 Q Did you discuss them with Major Torres?

8 A What relevance does that have on my  
9 knowledge, me trying to gain knowledge on excited  
10 delirium?

11 Q Did you --

12 A Why do I need to discuss that with Major  
13 Torres?

14 Q I'm just asking. Did you?

15 A I have no reason to.

16 Q Okay. You don't have any reason to improve  
17 the policies, procedures and practices of the Tift  
18 County Sheriff's Defendant?

19 A That's not my job.

20 MR. WILLIAMS: Object to form.

21 BY MR. SPURLIN:

22 Q Okay. So the question is not what research  
23 you've done since this incident. When you walked out  
24 on December 18th, 2018, you had no ability to identify  
25 and refrain from using a TASER application on someone

Page 237

1 suffering from excited delirium because you had no idea  
2 what it was, true?

3 MR. WILLIAMS: Object to form.

4 THE WITNESS: I did not know what excited  
5 delirium was.

6 BY MR. SPURLIN:

7 Q Okay. And you had no ability to identify  
8 whether a person was suffering from it or not?

9 A That's right. As far as I know, there are no  
10 definitive symptoms of excited delirium.

11 Q And on the day of the McBrayer incident, you  
12 had no understanding what excited delirium was?

13 A No, sir.

14 Q You had no way to identify if he was  
15 suffering from excited delirium?

16 A Again, I don't know -- there are no  
17 definitive symptoms of excited delirium.

18 Q You don't know and didn't know at that time  
19 whether any symptoms he displayed could be symptoms of  
20 excited delirium?

21 A I didn't have a chance to see any symptoms he  
22 had.

23 Q Okay.

24 A Mr. McBrayer didn't give me an opportunity to  
25 do any kind of assessment on how he was doing or

60 (Pages 234 to 237)

Page 238

1 even -- or even check to see if he was okay. So I  
2 didn't have the opportunity to do any kind of  
3 assessment. I think that's fair.

4 Q Okay. Let me -- you didn't answer the  
5 question.

6 On the day of the incident with McBrayer, you  
7 had no way of determining if he was suffering from  
8 excited delirium because you did not understand the  
9 term; true or false?

10 MS. NGUYEN: Object to form.

11 THE WITNESS: I did not understand what  
12 excited delirium was.

13 BY MR. SPURLIN:

14 Q Okay. All right, sir. Now, has anybody at  
15 the sheriff's department given you any independent  
16 training outside the course with Axon about what  
17 excited delirium was?

18 A No, sir.

19 Q Did Major Torres define for you what profound  
20 agitation meant?

21 A I don't know.

22 Q Did he define for you what severe exhaustion  
23 was?

24 A I don't know.

25 Q Did he define for you what drug intoxication

Page 239

1 was?

2 A I don't know.

3 Q Okay. In this case before you deployed your  
4 TASER weapon, you concluded that Mr. McBrayer may be  
5 under the influence of drugs, correct?

6 MR. WILLIAMS: Object to form.

7 THE WITNESS: I suspected. I did not  
8 conclude.

9 BY MR. SPURLIN:

10 Q Okay. All right. And you were aware that  
11 persons who you suspected were under the influence of  
12 drugs were particularly susceptible to injury from CEW  
13 use, were you not?

14 A I mean, it's my understanding that it's a --  
15 I mean, anybody's susceptible to injury from a CEW.

16 Q I understand.

17 But you knew that people who might be under  
18 the influence were in the more susceptible populations,  
19 right?

20 A I'm fairly certain that says that somebody  
21 under the influence is.

22 Q Okay.

23 A Not possible.

24 Q All right. And you knew that he was  
25 agitated?

Page 240

1 MR. WILLIAMS: Object to form.

2 Go ahead.

3 THE WITNESS: I mean, I -- I knew that he was  
4 agitated, yes.

5 BY MR. SPURLIN:

6 Q Okay. All right. Are you familiar with the  
7 physiological effects of the TASER on individuals?

8 A Can you explain to me what you mean?

9 Q Yeah.

10 And let me ask you this before I go there.  
11 You indicated that the TASER applications by you had  
12 absolutely no effect on him; is that correct?

13 A That is my understanding, yes.

14 Q Okay. And part of your testimony was that  
15 you don't think that the probes were far enough apart;  
16 is that correct?

17 A Yes.

18 Q To completely incapacitate him, correct?

19 MR. WILLIAMS: Object to form.

20 MS. NGUYEN: Join.

21 THE WITNESS: I don't think I ever stated to  
22 completely incapacitate him.

23 BY MR. SPURLIN:

24 Q All right. Well, let me make sure I  
25 understand.

Page 241

1 The optimal result from your standpoint is  
2 that the neuromuscular incapacitation occur and they  
3 lose control of their muscles, right?

4 A Correct.

5 Q And then you can handcuff them, right?

6 A Correct.

7 Q That's the optimal result, the ideal result,  
8 correct?

9 A Yes, sir.

10 Q That doesn't mean if you have a less optimal  
11 application that there's no effect on their body, does  
12 it?

13 MR. WILLIAMS: Object to form.

14 MS. NGUYEN: Join, and foundation.

15 THE WITNESS: I don't know that to be  
16 factual.

17 BY MR. SPURLIN:

18 Q The electricity is still going through their  
19 body, is it not?

20 A Not to --

21 MS. NGUYEN: Object to form and foundation.

22 THE WITNESS: Not necessarily. I mean,  
23 you're making the assumption that the probes were  
24 actually -- actually had a good connection.

25 BY MR. SPURLIN:

61 (Pages 238 to 241)

Page 242

Page 243

Q Are you making the assumption they did not?  
 A I'm saying that there's no -- by my understanding and the training that I've received, the sound of that popping noise tells me that it did not completely -- complete that circuit, yes.

Q To have an optimal, ideal result that he lose control of his muscles, right?

MR. WILLIAMS: Object to form.

THE WITNESS: From my understanding is that that meant that I did not have a connectivity.

BY MR. SPURLIN:

Q Okay. So you're --

A Now, what I can tell you is, is I know that there is -- I know there's a report that was generated that tells you the effectiveness. Now, I don't have that.

Q Okay.

A And I would have to refer you to that for you to know what the effectiveness was.

Q Is it your belief that there was absolutely zero effect on him? He didn't feel any electricity at all?

A I'm not Mr. McBrayer. I don't know that.

Q Well, do you know from your education, training and experience whether your four applications

for 20 seconds had any electrical charge felt by his body?

A Again, I don't know that.

Q Okay.

A I mean, you're asking me to speculate.

Q Didn't he get down on his knees twice and you thought he was going to comply?

A He did.

Q After you pulled the trigger and applied the TASER?

MR. WILLIAMS: Object to form.

MS. NGUYEN: Join.

THE WITNESS: You can watch my video to get that information.

BY MR. SPURLIN:

Q Okay.

A I don't know.

Q Now, Exhibit 6 that you were shown by Ms. Nguyen that state that --

MR. WILLIAMS: Which one is that?

BY MR. SPURLIN:

Q On page 90. The one on the bottom.

A There it is. Okay.

Q State that the effects include changes in blood chemistry, blood pressure, respiration, heart

Page 244

Page 245

rate, rhythm, adrenaline, and stress hormones.

Did I read that accurately?

A You did.

Q Now, do you know if your four applications had any effect on any of those in him simply because you didn't get an ideal neuromuscular incapacitation?

MR. WILLIAMS: Object to form.

MS. NGUYEN: Object to the form and foundation.

THE WITNESS: I mean, I don't -- I don't know that he didn't have any of those issues beforehand. I don't know that he didn't have them then. I don't know. You're asking me to speculate again.

BY MR. SPURLIN:

Q Okay. Well, did you ever receive training that if you don't get a complete neuromuscular incapacitation that there's no effect on the person?

A I mean, I don't recall.

Q Okay. All right. So when you left your training and began to tote a TASER, you didn't understand the physiological effects on the person if you didn't get a complete neuromuscular incapacitation, true?

MS. NGUYEN: Object to form.

MR. WILLIAMS: Object to form.

THE WITNESS: I mean, again, I had a basic understanding of how to use the TASER.

BY MR. SPURLIN:

Q I understand. That's not the question.

A Okay.

Q Did you understand if you didn't get a complete optimal neuromuscular incapacitation whether there would still be some effects on the person that you shot with the TASER; yes or no?

MS. NGUYEN: Object to the form.

MR. WILLIAMS: Object to form.

THE WITNESS: No. You're -- I don't agree with that statement, no.

BY MR. SPURLIN:

Q Okay. Did you receive any training where you understood what the term "excited delirium" meant?

A I know that we discussed excited delirium. But, again, there was really no definitive definition nor symptoms of excited delirium that were given to me that I recall.

Q Do you recall the word being used by Torres and you all discussing its meaning or how to recognize it?

A I do know that it was mentioned. But, again,

62 (Pages 242 to 245)

Page 246

1 I don't know to what degree.

2 Q Did you do any research after you left that  
3 class so that you would be proficient in knowing if a  
4 person was under the influence of excited delirium  
5 before you utilized the weapon on McBrayer?

6 MR. WILLIAMS: Object to form.

7 MS. NGUYEN: Join.

8 THE WITNESS: No, sir.

9 BY MR. SPURLIN:

10 Q Okay.

11 A There's a lot of other things, I don't know  
12 what they mean, that I don't go out and research. I  
13 mean, I don't understand a lot of medical terms.

14 Q Okay. Deescalation training, you had had  
15 some deescalation training before this episode,  
16 correct?

17 A Yes, sir.

18 Q Who taught you that course?

19 A I don't -- I don't know.

20 Q Do you remember the specific methods of  
21 deescalating a situation so you don't have to use force  
22 or a weapon?

23 A I mean, there's a lot of deescalation  
24 techniques.

25 Q Can you tell me what they are?

Page 248

1 techniques with McBrayer?

2 A I never had the opportunity.

3 Q So the answer is no?

4 A The answer is no. I never had an  
5 opportunity.

6 Q Okay. When you first saw him, you said he  
7 was leaning against the lean-to; is that right?

8 A No, sir. That's incorrect. He was leaning  
9 against the building.

10 Q The building next to the lean-to; is that  
11 correct?

12 A Yes, sir.

13 Q At that point in time, you had no reason to  
14 suspect him of a crime?

15 A No, sir.

16 Q You had no evidence anyone had committed a  
17 crime, correct?

18 A That's correct.

19 Q You did not identify yourself as an officer,  
20 correct?

21 A Are you talking about verbally?

22 Q Yes.

23 A No. I never stated I was a law enforcement  
24 officer, no.

25 Q You did not have lights and siren on as you

Page 247

1 A I mean, can I tell you what every  
2 deescalation technique is? No, not likely.

3 Q Can you tell me any?

4 A I mean, yes. I mean, you -- the idea behind  
5 deescalation is to talk to people and try to -- and try  
6 to, you know, figure out what's going on, you know.

7 Q Right.

8 Is tone of voice a method of deescalating a  
9 situation?

10 A It can be.

11 Q Is reasoning with someone a method of  
12 deescalating?

13 A It can be.

14 Q Is trying to let them know that you  
15 understand their issue and you're there to help?

16 A But in order to understand their issue, I  
17 have to know their issue.

18 Q So you would have to ask questions, right?

19 A Right.

20 Q Appear interested in them?

21 A Yes, sir.

22 Q Appear that you're there to help and not  
23 harm?

24 A Yes.

25 Q Did you ever any utilize any deescalation

Page 249

1 approached?

2 A That's correct.

3 Q You had no search warrant?

4 A That's correct.

5 Q You had no arrest warrant?

6 A Correct.

7 Q You didn't know whose property it was?

8 A That is correct.

9 Q You didn't know who he was?

10 A That is correct.

11 Q Leaning against the building was not a  
12 criminal activity?

13 A It's not.

14 Q What legal right did you have to go on to  
15 that property without probable cause of a crime being  
16 committed?

17 MS. NGUYEN: Object to form.

18 MR. WILLIAMS: Object to form.

19 THE WITNESS: As I'm sure you're aware, I  
20 don't have to have probable cause. All I have to  
21 have is articular, reasonable suspicion.

22 The fact that we received a call in that area  
23 and the fact that that person was yelling for help  
24 at 4:00 a.m. is what led me to that area.

25 Mr. McBrayer being the only person in sight would

63 (Pages 246 to 249)



Page 250

1 lead me to believe -- it would lead a reasonable  
 2 person to believe that he had some involvement in  
 3 the call for service, whether it be a victim or  
 4 whether it be a suspect.  
 5 My belief is that he had some kind of  
 6 involvement. It's not really typical for somebody  
 7 to be leaned up against a building at 4:00 a.m. in  
 8 the dark yelling.  
 9 BY MR. SPURLIN:  
 10 Q Let me make sure I had understand. Are you  
 11 saying that you had articulable, reasonable suspicion  
 12 that a crime had been committed?  
 13 A No, sir.  
 14 Q You said, "All I have to have is articulable,  
 15 reasonable suspicion."  
 16 Did I accurately repeat what you said?  
 17 A Yes, sir.  
 18 Q Articulable, reasonable suspicion of what?  
 19 A Articulable, reasonable suspicion that,  
 20 okay -- I mean, even that a crime had occurred. You  
 21 know, one can articulate that obviously something is  
 22 going on because people don't just call 911 and say  
 23 somebody's yelling for help.  
 24 Q All right.  
 25 A That's not typical.

Page 252

1 there was a car accident, right?  
 2 A Yes.  
 3 Q You had not been given any information that a  
 4 crime had been committed, right?  
 5 A Well, fleeing the scene of an accident is a  
 6 crime.  
 7 Q Oh, really?  
 8 A Duty to report an accident is a crime, yes.  
 9 Q Okay. So if I get in an accident three  
 10 blocks from my house and I walk to my house to call the  
 11 police, you think I've committed a crime?  
 12 A No, because you're reporting the accident.  
 13 Duty to report an accident is a crime.  
 14 At this point, Mr. McBrayer, or whoever was  
 15 driving this vehicle, had not reported this accident.  
 16 Q Okay. How far was your encounter with him  
 17 from the scene of where the vehicle was found?  
 18 A I don't know the answer to that.  
 19 Q You don't know?  
 20 A No.  
 21 Q Do you know where the person was at that was  
 22 calling for help?  
 23 A No, sir.  
 24 Q In fact, you had no idea? That's why you  
 25 rolled your windows down and were listening, right?

Page 251

1 Q Let me -- I'm missing a word. You said  
 2 articulable, reasonable suspicion?  
 3 A Yes, sir.  
 4 Q But you didn't say of what.  
 5 Is it articulable, reasonable suspicion that  
 6 a crime has been committed?  
 7 A It's that a crime is being or has been  
 8 committed.  
 9 Q Okay. At that time, what reasonable,  
 10 articulable suspicion did you have that a crime had  
 11 been committed?  
 12 A Or is being?  
 13 Q Or is being committed?  
 14 A Okay. The fact that somebody called 911 and  
 15 said somebody is yelling for help.  
 16 Q Okay.  
 17 A Okay. I understand that in itself is not a  
 18 crime. Yelling for help is not crime.  
 19 However, I can articulate that if somebody is  
 20 yelling for help, there's obviously a reason they're  
 21 yelling for help.  
 22 Q Okay. You knew there had been a car  
 23 accident, true?  
 24 A Yes.  
 25 Q You had been given that information that

Page 253

1 A Yes, sir.  
 2 Q At the time that you went on your search, you  
 3 had no probable cause or articulable suspicion that a  
 4 crime had been committed, right?  
 5 MR. WILLIAMS: Object to form.  
 6 MS. NGUYEN: Join.  
 7 THE WITNESS: The reason that I approached  
 8 Mr. McBrayer in the first place was not because of  
 9 a crime. It was to render assistance.  
 10 BY MR. SPURLIN:  
 11 Q I understand.  
 12 But you said -- the reason we chased that  
 13 rabbit is you said I had articulable, reasonable  
 14 suspicion. And I said of what?  
 15 A No, sir. No, sir.  
 16 Q And you said that a crime had been or is  
 17 being committed?  
 18 A No, sir.  
 19 Q That's what you said.  
 20 A I would like to make a correction. I never  
 21 said that I had. You asked me -- your question to me  
 22 was did you have probable cause to go on that property.  
 23 And I said I do not need probable cause. All I need is  
 24 ARS or probable cause, okay.  
 25 Q You had neither?

64 (Pages 250 to 253)

Page 254

1 A I never said -- I never said that I did. You  
 2 assumed that I did.  
 3 Q You had neither?  
 4 A At that point, no, sir.  
 5 MR. WILLIAMS: Objection. Whatever that is,  
 6 I object to it.  
 7 BY MR. SPURLIN:  
 8 Q All right. So what legal right did you have  
 9 to go on the property?  
 10 A Because I was offering assistance to the  
 11 person in need of help. That is part of my job.  
 12 Q And you offered assistance to McBrayer?  
 13 A I attempted to, yes.  
 14 Q Okay. Did you ever say, hey, man, I'm here  
 15 to help you?  
 16 A I never got the opportunity.  
 17 Q Did you ever ask him his name?  
 18 A I never got the opportunity.  
 19 Q Did you ever say, hey, man, don't run,  
 20 everything's fine?  
 21 A Never got the opportunity.  
 22 Q Did you ever say, hey, I'll call your family?  
 23 A I'm going to resort back to I never got the  
 24 opportunity.  
 25 Q Did you ever say were you in the car wreck?

Page 256

1 A No, sir, he did not.  
 2 Q Was that area in your zone?  
 3 A I -- I don't know.  
 4 Q You just heard dispatch and went out there on  
 5 your own; is that right?  
 6 A I went as a secondary unit to assist the  
 7 other deputy.  
 8 Q I understand.  
 9 But were you summoned by the other deputy?  
 10 A No, sir, I wasn't.  
 11 Q The decision to go was yours and yours alone?  
 12 A Yes, sir.  
 13 Q Okay. All right. When you stopped by  
 14 Spurgeon, was he speaking to someone else?  
 15 A No, sir. Not that I recall.  
 16 Q Did you gather any information from him?  
 17 A No, sir.  
 18 Q Did he give you any information?  
 19 A No, sir.  
 20 Q Did you just tell him what you were going to  
 21 do?  
 22 A Yes, sir.  
 23 Q Who was in control of that situation, you or  
 24 Spurgeon?  
 25 MR. WILLIAMS: Object to form.

Page 255

1 A Never got the opportunity.  
 2 Q Did you say, hey, you've been calling for  
 3 help, I'm here to help?  
 4 A Never got the opportunity.  
 5 Q Did you immediately draw your TASER weapon  
 6 when you got out of the car?  
 7 A No, sir, I did not.  
 8 Q How much time elapsed before you drew your  
 9 TASER weapon?  
 10 A I'm not sure.  
 11 Q Okay. What specifically did he do that made  
 12 you draw your TASER weapon?  
 13 A Well, when I initially got there, he was  
 14 yelling. He slapped the side of the building. He ran  
 15 around behind it.  
 16 Q Okay. Let me stop you. Did you draw your  
 17 TASER because he slapped the building?  
 18 A No, sir. I drew my TASER because he ran  
 19 around behind the building and I didn't know where he  
 20 was going or what he was doing.  
 21 Q Okay. Now, were you specifically summoned by  
 22 dispatch to go to the scene?  
 23 A No, sir, I was not.  
 24 Q Okay. Did Spurgeon specifically call you to  
 25 go to the scene?

Page 257

1 THE WITNESS: Which situation are you  
 2 speaking of?  
 3 BY MR. SPURLIN:  
 4 Q I mean, is he superior to you? Was that --  
 5 A I mean, we're both the same. We're both  
 6 deputies.  
 7 Q Okay. So neither one of you would be the one  
 8 telling the other one what to do in that situation?  
 9 A No, sir.  
 10 Q And you just told him I'm going on a --  
 11 seeing what's going on, right?  
 12 A I told him that I was going to go try to  
 13 locate the party.  
 14 Q And what was he doing?  
 15 A You would have to ask Deputy Spurgeon that.  
 16 Q Was he at the car?  
 17 A Again, you would have to ask him that. I  
 18 don't recall.  
 19 Q You just don't remember?  
 20 A No, sir.  
 21 Q Did you ever have any CIT training before  
 22 this episode?  
 23 A No, sir, I did not.  
 24 Q Okay. What is CIT training?  
 25 A It's crisis intervention training.

65 (Pages 254 to 257)

Page 258

1 Q And who is it -- what is it used for?  
 2 A It's used to determine if someone is in  
 3 crisis.  
 4 Q Crisis because of what?  
 5 A I mean, it could be a number of things.  
 6 Q Anything?  
 7 A Typically mental health issues is the  
 8 majority of what you cover.  
 9 Q And what have you been trained in how to deal  
 10 with those persons?  
 11 A Can you elaborate on that question?  
 12 Q I mean, do they need different behavior from  
 13 a deputy than a person who's thinking rationally needs?  
 14 MR. WILLIAMS: Object to form.  
 15 THE WITNESS: It depends on the totality of  
 16 the situation.  
 17 BY MR. SPURLIN:  
 18 Q And are there different techniques that  
 19 you've been trained to use in those situations with  
 20 mentally ill persons?  
 21 A Yes, sir, there are.  
 22 Q What are those techniques?  
 23 A Again, it depends on the totality. You're  
 24 asking me to give you how I would handle a situation --  
 25 Q No, I'm not.

Page 260

1 of rationally?  
 2 BY MR. SPURLIN:  
 3 Q Well, I appreciate that clarification. But  
 4 you've already told me you have a definition because  
 5 you told me that the other time you drew your TASER,  
 6 the person was acting irrationally.  
 7 A Yes, sir.  
 8 Q And I asked you what that meant.  
 9 A Okay.  
 10 Q So in your mind, under whatever definition  
 11 you apply, was McBrayer acting rationally or  
 12 irrationally?  
 13 MR. WILLIAMS: Object to form.  
 14 MS. NGUYEN: Join.  
 15 THE WITNESS: I would say he was acting  
 16 irrationally.  
 17 BY MR. SPURLIN:  
 18 Q Okay. And what factors did you determine led  
 19 you to the conclusion he was acting irrationally?  
 20 MR. WILLIAMS: Same objection.  
 21 THE WITNESS: Well, Mr. McBrayer was yelling  
 22 things like "God hates you."  
 23 BY MR. SPURLIN:  
 24 Q Okay.  
 25 A He was hiding behind a backhoe bucket. He

Page 259

1 A -- without a situation.  
 2 Q I'm just giving me -- asking you the tools in  
 3 your tool belt.  
 4 MR. WILLIAMS: Object to form.  
 5 BY MR. SPURLIN:  
 6 Q What are some of the methods that you use?  
 7 MR. WILLIAMS: Object to form.  
 8 THE WITNESS: Again, it depends on -- it  
 9 depends on what's going on.  
 10 BY MR. SPURLIN:  
 11 Q I didn't ask you which one you would use. I  
 12 asked you which tools do you have that you're aware of  
 13 and have been trained about for dealing with persons  
 14 with mental health issues? Can you tell me any of them  
 15 now as we sit here today?  
 16 A Yes, sir.  
 17 There's a lot of tools that you have. I  
 18 mean, the way you talk to them is different. I mean,  
 19 the way you talk to them. The way that you interact  
 20 with them. You have other agencies that you can call  
 21 to assist you, you know.  
 22 Q In this situation, how long did it take you  
 23 to realize that McBrayer was not behaving rationally?  
 24 MR. WILLIAMS: Object to form.  
 25 THE WITNESS: I mean, what is your definition

Page 261

1 was flailing his arms. And then he charged at me.  
 2 Q Okay.  
 3 A Which I don't think is rational.  
 4 Q All right. So all four of the things you  
 5 observed initially led you to conclude he was acting  
 6 irrationally, right?  
 7 A Yes, sir.  
 8 Q Sometimes behavior can be ambiguous?  
 9 A What does that mean?  
 10 Q A couple of things look rational and a couple  
 11 of things they do are irrational.  
 12 In this case, 100 percent of the things you  
 13 just observed with him led you to conclude he was  
 14 acting irrationally, right?  
 15 A Yes.  
 16 Q You thought the yelling things that didn't  
 17 make sense was irrational, right?  
 18 A Yes, sir.  
 19 Q What he was yelling didn't make sense, did  
 20 it?  
 21 MR. WILLIAMS: Object to form.  
 22 Go ahead.  
 23 THE WITNESS: No.  
 24 BY MR. SPURLIN:  
 25 Q Did he ever say anything to you that made

66 (Pages 258 to 261)

Page 262

1 sense to you?  
 2 A No, sir.  
 3 Q You thought hiding was an irrational act,  
 4 correct?  
 5 A Yes.  
 6 Q You thought flailing his arms was an  
 7 irrational act, correct?  
 8 A Yes.  
 9 Q Now, at that point in time before he charged  
 10 you, did you make any attempt to summon anybody with  
 11 mental health expertise?  
 12 MR. WILLIAMS: Object to form.  
 13 THE WITNESS: No, sir.  
 14 BY MR. SPURLIN:  
 15 Q Did you call in that you have a person with a  
 16 mental health issue?  
 17 A No, sir, because at that point, I hadn't  
 18 determined that he had a mental health issue, nor did I  
 19 have a reason to believe that he did.  
 20 Q Well, you said the yelling irrational things  
 21 was a reason to believe it, right?  
 22 MR. WILLIAMS: Object to form.  
 23 MS. NGUYEN: Join.  
 24 MR. WILLIAMS: He didn't say that.  
 25 THE WITNESS: I never stated -- I never said

Page 263

1 that.  
 2 BY MR. SPURLIN:  
 3 Q You said -- I said every single thing you  
 4 observed led you to believe he was irrational?  
 5 A Right.  
 6 Q And you said yes?  
 7 A I never said that irrational thinking is  
 8 definitely a mental illness.  
 9 Q Okay. It's a symptom of that, right?  
 10 MR. WILLIAMS: Object to form.  
 11 MS. NGUYEN: Join.  
 12 THE WITNESS: Possibly.  
 13 BY MR. SPURLIN:  
 14 Q Possibly?  
 15 A It could be a symptom of many other things.  
 16 Q Okay. So at least there was reasonable  
 17 suspicion that he might have a mental health issue,  
 18 right?  
 19 MR. WILLIAMS: Object to form.  
 20 MS. NGUYEN: Join.  
 21 THE WITNESS: In your mind, maybe. In my  
 22 mind, at that point in time, no.  
 23 BY MR. SPURLIN:  
 24 Q Well, aren't you trained --  
 25 A I wasn't trained at the time.

Page 264

1 Q Hang on.  
 2 Aren't you trained to consider possibilities?  
 3 With reasonable, articulable suspicion doesn't mean you  
 4 know someone's committed a crime? It means there are  
 5 facts that might suggest a crime; isn't that true?  
 6 MR. WILLIAMS: Object to form.  
 7 THE WITNESS: Okay. But what you're asking  
 8 me to do --  
 9 BY MR. SPURLIN:  
 10 Q Answer my question.  
 11 A That is true, yes.  
 12 Q That's true.  
 13 And probable cause doesn't mean I know a  
 14 crime has been committed, it just means a crime may  
 15 have been committed, true?  
 16 A True.  
 17 Q So all of these irrational things doesn't  
 18 mean he was having a mental illness crisis, but it  
 19 certainly led you to believe that was a strong  
 20 possibility, true?  
 21 MR. WILLIAMS: Object to form.  
 22 BY MR. SPURLIN:  
 23 Q True?  
 24 A No, sir.  
 25 Q You disagree with that?

Page 265

1 A I disagree with that.  
 2 Q Okay. Did you ever summon Spurgeon and say  
 3 this guy is acting irrationally, I need you to come on  
 4 up here?  
 5 A I never said he was acting irrationally.  
 6 Q Okay.  
 7 A I don't recall that, no.  
 8 Q Okay.  
 9 MR. WILLIAMS: I need a break, bathroom  
 10 break.  
 11 MR. SPURLIN: All right. Okay.  
 12 MR. WILLIAMS: You keep going rapid fire.  
 13 I've been trying to wait for a break, but there  
 14 wasn't one.  
 15 THE VIDEOGRAPHER: The time is 4:22. We're  
 16 going off the record.  
 17 (Whereupon, a recess was taken.)  
 18 THE VIDEOGRAPHER: We're back on the record.  
 19 The time is 4:27.  
 20 BY MR. SPURLIN:  
 21 Q Deputy, did you ever, at any point in the  
 22 encounter with McBrayer, determine that he was having a  
 23 mental health crisis?  
 24 A No, sir.  
 25 Q Did you ever summon anyone to deal with that?

67 (Pages 262 to 265)

Page 266

1 A Summon anyone to deal with --  
 2 Q Yeah. A mental health crisis?  
 3 MR. WILLIAMS: Object to form.  
 4 THE WITNESS: No, sir.  
 5 BY MR. SPURLIN:  
 6 Q Did you ever contact any supervisor or shift  
 7 supervisor or other deputy to give you any advice on  
 8 how to deal with someone who you thought was acting  
 9 irrationally?  
 10 A I just want to clarify again that -- I'm  
 11 sorry, you said acting irrationally. No, sir.  
 12 Q Okay. Did you ever summon anyone to provide  
 13 any medical training -- or excuse me, let me start  
 14 over.  
 15 Did you ever summon anyone to provide any  
 16 medical care or evaluation of any kind to McBrayer?  
 17 A No, sir.  
 18 Q Did you ever determine that he needed any  
 19 medical evaluation or care?  
 20 MR. WILLIAMS: Hold on a second. What is  
 21 that?  
 22 MS. NGUYEN: It's a car.  
 23 THE COURT REPORTER: Somebody's base.  
 24 (Whereupon, the record was paused.)  
 25 MR. SPURLIN: Do you want me to start over?

Page 267

1 THE VIDEOGRAPHER: Yes.  
 2 BY MR. SPURLIN:  
 3 Q Did you ever summon anyone to provide any  
 4 health evaluation or health care of any kind to  
 5 McBrayer?  
 6 A No, sir, I did not.  
 7 Q Did you ever determine that he needed any  
 8 medical care or mental evaluation of any kind?  
 9 A No, sir, I did not.  
 10 Q Okay. You never contacted dispatch or anyone  
 11 else and said this guy needs to be evaluated, someone  
 12 needs to come out here, correct?  
 13 A No, sir, I did not.  
 14 Q Okay. Did you know EMS had been summoned?  
 15 A Yes, sir.  
 16 Q You heard Spurgeon contact EMS, correct?  
 17 A Yes, sir.  
 18 Q You heard him specifically say I need EMS,  
 19 he's busted my knee, or something to that effect,  
 20 correct?  
 21 A I believe it was send EMS 10-18.  
 22 Q What does that mean?  
 23 A 10-18 is quickly.  
 24 Q You don't remember him saying, it's for me,  
 25 my knee got busted?

Page 268

1 A I don't recall who he said it was for, I  
 2 mean.  
 3 Q Do you remember Spurgeon saying we need EMS  
 4 for Mr. McBrayer?  
 5 A No, sir.  
 6 Q Okay. Did you all ever get Mr. McBrayer to  
 7 identify himself?  
 8 A I did not personally, no.  
 9 MR. WILLIAMS: Object to form.  
 10 BY MR. SPURLIN:  
 11 Q Now, you concluded in your own mind that he  
 12 was on something, correct?  
 13 A Yes, sir.  
 14 Q Okay. Did you ever seek out anyone to come  
 15 and provide him any care for some type of drug usage?  
 16 A No, sir, I did not.  
 17 Q Do you all have the capability to provide any  
 18 kind of care for drug usage?  
 19 A I do at this point, yes.  
 20 Q And what is that?  
 21 A I have Narcan.  
 22 Q What is Narcan?  
 23 A Narcan is medication that reverses the  
 24 effects of opioids.  
 25 Q And can you -- can you utilize that yourself?

Page 269

1 A Yes, sir.  
 2 Q Are you authorized by the sheriff's  
 3 department to do that?  
 4 A I am.  
 5 Q How long have deputies, not you, been  
 6 authorized to utilize that?  
 7 A That would be a sheriff's office, honestly.  
 8 Q You just weren't trained at that time?  
 9 A Correct.  
 10 Q Was Spurgeon?  
 11 A You would have to ask Deputy Spurgeon.  
 12 Q How do you do that? Do you give them a shot?  
 13 A No, sir. So the -- I mean, I can show you,  
 14 if you would like.  
 15 Q You can just tell me.  
 16 A So it's a -- it's actually given nasally.  
 17 It's almost like a nasal spray. It is a nasal spray.  
 18 I take it out. It's got a place that I put my fingers  
 19 on the top, my thumb goes on the bottom. And all I do  
 20 is insert it in your nose, squeeze the bottom, and it  
 21 shoots that spray into your nose.  
 22 Q I'm trying to get through this without  
 23 showing every video there is, but I think you said  
 24 three times on the -- on the body cam, I know he's on  
 25 something. I'm certain he's on something, something to

68 (Pages 266 to 269)



Page 270

1 that effect.  
 2 Did you ask anyone else, including Henderson,  
 3 to utilize Narcan?  
 4 MR. WILLIAMS: Object to form.  
 5 THE WITNESS: No, sir, I didn't.  
 6 MS. NGUYEN: Join.  
 7 BY MR. SPURLIN:  
 8 Q Was there anyone there that night that was  
 9 authorized to do that?  
 10 A That's -- I don't know the answer to that  
 11 question.  
 12 Q Was there any discussion about calling  
 13 someone to the scene that was authorized to do that?  
 14 A No, sir.  
 15 Q Okay. When the EMS people first arrived, did  
 16 you tell them he's on something, you all need to check  
 17 on him?  
 18 A No, sir.  
 19 Q Do you know who told them finally to go check  
 20 on somebody in Henderson's vehicle?  
 21 A No, sir, I don't.  
 22 Q It was not you?  
 23 A No, sir.  
 24 Q You do agree that when the EMS came, all  
 25 three of them checked on Spurgeon first?

Page 272

1 A I mean, in my mind passed out, unconscious --  
 2 or I'm sorry. In my mind, passed out is -- I mean, if  
 3 you drink too much, you pass out.  
 4 Q Does it mean not awake?  
 5 A In my mind, yes.  
 6 MR. WILLIAMS: Object to form.  
 7 BY MR. SPURLIN:  
 8 Q Okay. I mean, isn't that the same thing as  
 9 being unconscious?  
 10 MR. WILLIAMS: Object to the form.  
 11 THE WITNESS: I don't know. I'm not sure  
 12 what unconscious -- I mean, I don't know the  
 13 definition of unconscious.  
 14 BY MR. SPURLIN:  
 15 Q But you didn't tell the EMS to go check on  
 16 him, he's unconscious?  
 17 A No, sir.  
 18 Q You didn't tell them he's limp as we put him  
 19 into the car?  
 20 A No, sir.  
 21 Q Okay. All right. You said you had OC spray  
 22 with you that night but you didn't want to utilize it  
 23 because it could have an effect on you?  
 24 A Among other reasons. That's not the only  
 25 reason I stated it, but yes.

Page 271

1 A I believe the -- I don't know exactly how  
 2 many did.  
 3 Q Okay. Do you agree Spurgeon was checked on  
 4 first?  
 5 A Yes, sir.  
 6 Q Okay. And you don't remember anyone saying  
 7 you all better go check on that guy, he's unconscious?  
 8 MR. WILLIAMS: Object to form.  
 9 THE WITNESS: No, sir.  
 10 BY MR. SPURLIN:  
 11 Q You knew he was unconscious when he was  
 12 loaded into the car, right?  
 13 MR. WILLIAMS: Object to form.  
 14 THE WITNESS: No, sir, I don't know that to  
 15 be a fact.  
 16 BY MR. SPURLIN:  
 17 Q Did you believe he was unconscious?  
 18 MR. WILLIAMS: Object to form.  
 19 THE WITNESS: I believed that he had passed  
 20 out.  
 21 BY MR. SPURLIN:  
 22 Q Passed out?  
 23 A Yes, sir.  
 24 Q Okay. What's the difference in unconscious  
 25 and passed out?

Page 273

1 Q And one time a deputy accidentally pepper  
 2 sprayed a whole room full of lawyers in a cattle call,  
 3 so I know what happens.  
 4 But isn't true that the risk of affecting  
 5 others is much less in an open, outdoor space than in a  
 6 confined area?  
 7 A Not necessarily.  
 8 Q Okay. You would agree that if somebody  
 9 pepper sprays in this small room, it's more likely to  
 10 have an effect on all six of us than if you applied  
 11 your pepper spray outside?  
 12 A Yes, sir, I agree with that.  
 13 Q Okay.  
 14 A But there's no physical contact.  
 15 Q Okay.  
 16 A Physical contact is going to change that  
 17 exposure.  
 18 Q Okay. So did you consider OC spray or did it  
 19 just not hit your mind that night?  
 20 A No, sir, I didn't -- I'll be honest with you,  
 21 Mr. Spurlin, I don't use OC spray.  
 22 Q Okay. I understand.  
 23 It's not your choice anywhere?  
 24 A Correct.  
 25 Q I understand.

69 (Pages 270 to 273)

Page 274

1 Have you ever used it?  
 2 A No.  
 3 Q Okay.  
 4 A I'm sorry, correction. I have. Not in  
 5 civilian law enforcement.  
 6 Q I see.  
 7 Have you ever received any training anywhere,  
 8 the academy, Lenox, Omega, or Tift Sheriff's Department  
 9 on what white foam coming from someone's mouth means?  
 10 A No, sir, I haven't.  
 11 Q Okay. Was that the first time you had ever  
 12 observed white foam coming from anyone's mouth?  
 13 A No, sir, it's not.  
 14 Q Okay. Had you done independent research to  
 15 determine what white foam meant?  
 16 A No, sir.  
 17 Q Okay. That night you had no idea what it  
 18 meant?  
 19 A I made an assumption, correct.  
 20 Q Okay. And that assumption was it was drug  
 21 use, correct?  
 22 A Yes, sir.  
 23 Q And you, in fact, were certain and used the  
 24 words I'm certain he's on something, I've seen white  
 25 foam coming from his mouth, right?

Page 275

1 A Yes, sir.  
 2 Q I don't want to show every video. That's --  
 3 that's the terms you remember using, isn't it?  
 4 A Yes, sir.  
 5 Q In fact, any time somebody would bring  
 6 something up, you would volunteer, well, he's on  
 7 something, I'm certain of it, right?  
 8 MR. WILLIAMS: Object to form.  
 9 BY MR. SPURLIN:  
 10 Q Is that right?  
 11 A I made that statement, yes.  
 12 Q Okay. And no one at the sheriff's department  
 13 had ever given you any training that that means drug  
 14 use?  
 15 A No, sir.  
 16 Q That means any particular drug use?  
 17 A No, sir.  
 18 Q That means somebody's mentally ill?  
 19 A No, sir.  
 20 Q That means somebody's on some kind of mental  
 21 illness medication?  
 22 A No, sir.  
 23 Q That means somebody's exhausted, they've ran  
 24 3 miles and they're struggling to breathe? You don't  
 25 know what it meant?

Page 276

1 A No, sir.  
 2 Q Okay. Well, what was your assumption based  
 3 on?  
 4 A I had a case before where somebody was under  
 5 the influence of drugs and I saw the same thing.  
 6 Q What drug?  
 7 A I don't know.  
 8 Q All drugs make you have white foam come out  
 9 of your mouth?  
 10 A I never said that.  
 11 MR. WILLIAMS: Object to form.  
 12 THE WITNESS: What I'm telling you is I  
 13 don't --  
 14 BY MR. SPURLIN:  
 15 Q I'm asking. Do all drugs make you have white  
 16 foam come out of your mouth?  
 17 MR. WILLIAMS: Object to form.  
 18 THE WITNESS: I don't know.  
 19 BY MR. SPURLIN:  
 20 Q Do you have any education, training or  
 21 experience what drugs might cause someone to have white  
 22 foam coming out of their mouth?  
 23 A No, sir, I don't.  
 24 Q Okay. Okay. You didn't know anything about  
 25 McBrayer?

Page 277

1 A No, sir.  
 2 Q No previous experience with him?  
 3 A No, sir.  
 4 Q Okay. You never read any Miranda warnings to  
 5 McBrayer?  
 6 A No, sir.  
 7 Q Was he placed under arrest?  
 8 A At that point, no.  
 9 Q Was he ever placed under arrest?  
 10 A No, sir.  
 11 Q When he was handcuffed, he was not under  
 12 arrest?  
 13 A No, sir.  
 14 Q Did you have any belief at that time he had  
 15 committed a crime?  
 16 A Yes.  
 17 Q What crime?  
 18 A Well, I mean, there's -- there's several  
 19 crimes that were committed. Obstruction is the first  
 20 one. And then, I mean, he also assaulted me. He  
 21 struck me in my face.  
 22 Q Okay. Let's talk about both of those.  
 23 Why do you believe he committed obstruction?  
 24 A Because he fled upon sight of law  
 25 enforcement. He failed to -- failed to follow my

70 (Pages 274 to 277)

Page 278

1 commands that I was giving him.

2 Q Okay. Well, let me just ask you a couple of  
3 hypotheticals.

4 Right now, if you start giving me commands,  
5 do I have a duty to follow your commands?

6 MR. WILLIAMS: Object to form.

7 THE WITNESS: It depends on what they are.

8 BY MR. SPURLIN:

9 Q Okay. Well, what had he done to give you any  
10 reason to be entitled to give him commands?

11 A Because I was investigating a call for  
12 service.

13 Q Okay.

14 A In which he was the only person that was  
15 around.

16 Q Okay.

17 A Which led me to believe and suspect that the  
18 call for service was either for him or about him.

19 Q Okay.

20 A So I was trying to conduct an investigation  
21 to determine if he needed assistance or if he was the  
22 reason somebody else needed assistance.

23 Q Okay. You indicated -- you said he assaulted  
24 you. But you told Ms. Nguyen you weren't sure when he  
25 hit you; is that true?

Page 279

1 A I'm not sure at what point during what we  
2 were stating that he hit me.

3 Q Okay. You testified that he charged towards  
4 you the first time; is that right?

5 A Correct.

6 Q And that's when you first applied your TASER,  
7 correct?

8 A That is correct.

9 Q And there's no dispute in your mind, having  
10 seen the report, that you dis -- discharged your TASER  
11 four times, correct?

12 A Correct.

13 Q For 20 seconds total, correct?

14 A Correct.

15 Q And there's no dispute in your mind that  
16 Spurgeon drive stunned him twice for five seconds each;  
17 is that right?

18 MR. WILLIAMS: Object to form.

19 THE WITNESS: I don't agree with that because  
20 he pulled away from the TASER at some point.

21 BY MR. SPURLIN:

22 Q Okay. Which time? The first time he drive  
23 stunned him or the second?

24 A You would -- I would have to refer you to the  
25 video. I'm not sure.

Page 280

1 Q Do you know what part of his body he drive  
2 stunned him?

3 A Again, sir, I would ask you to watch the  
4 video.

5 Q Okay. You can't tell me neck, shoulder,  
6 back?

7 A I don't want to misspeak.

8 Q You don't remember from observation?

9 A I don't remember, no.

10 Q Okay. But you knew for a fact he had drive  
11 stunned him?

12 A Yes, sir. I know that he drive stunned him.

13 Q You saw it?

14 A Yes.

15 Q And heard it?

16 A Correct.

17 Q Okay. Now, where did he hit you?

18 A I'm sorry?

19 Q Where did he hit you?

20 MR. WILLIAMS: Object to form.

21 You're referring to McBrayer now, right, back  
22 to what he was talking --

23 MR. SPURLIN: I'll go back.

24 BY MR. SPURLIN:

25 Q You said he hit you in your face?

Page 281

1 A Yes, sir.

2 Q Where did he hit you?

3 A In my face.

4 Q Where? Top? Side? Left? Right? Middle?  
5 Nose? Where did he hit you?

6 A I'm sorry, two years later I don't remember.

7 Q You don't remember?

8 A No.

9 Q Did he hit you with an open hand or a closed  
10 fist?

11 A Again, I don't remember.

12 Q Did he hit you with a left or a right?

13 A I forgot to ask him.

14 Q You don't remember?

15 A No.

16 Q Did you block it?

17 A No, sir. I didn't have the opportunity to.

18 Q All right. Did he hit you from the side you  
19 were holding your TASER or the side you were holding  
20 the flashlight?

21 MR. WILLIAMS: Object to form.

22 THE WITNESS: Sir, you're asking me to  
23 remember things that happened in the blink of an  
24 eye, okay, in a high stress situation. And I'm  
25 sorry, I don't remember the facts.

71 (Pages 278 to 281)

Page 282

1 BY MR. SPURLIN:

2 Q Did you document those anywhere that night,  
3 like in an incident report?

4 MR. WILLIAMS: Object to form.

5 THE WITNESS: I don't recall.

6 BY MR. SPURLIN:

7 Q Okay. Did you have any bruises, cuts,  
8 contusions, cuts or lacerations?

9 A No, sir.

10 Q Okay. Did you seek medical care?

11 A No, sir, I did not.

12 Q Did you have any redness on your face?

13 A I -- I don't know.

14 Q Did you seek any medical attention?

15 A No, sir.

16 Q Did you provide any medical attention to  
17 yourself?

18 A No, sir.

19 Q Did you need a Band-Aid?

20 A No, sir.

21 Q Did you have a bruise the next day?

22 A Not that I recall.

23 Q Okay. Did you tell anyone where he hit you?

24 MR. WILLIAMS: Object to form.

25 THE WITNESS: I don't recall.

Page 283

1 BY MR. SPURLIN:

2 Q Did you hit him?

3 A No, sir.

4 Q Okay. You said -- you said he hit you. What  
5 happened when he hit you?

6 A He knocked -- I know he knocked me to the  
7 ground. And it actually --

8 Q You fell to the ground?

9 A I'm sorry?

10 Q Did you fall to the ground? Completely to  
11 the ground?

12 A Yes.

13 Q On your back?

14 A I don't recall.

15 Q Were you on your side?

16 A I don't recall where I fell.

17 Q How long did it take you to get up?

18 A I don't know.

19 Q Did he go to the ground with you?

20 A No.

21 Q Did he try to hit or kick you when you were  
22 on the ground?

23 A I don't remember.

24 Q What did he do while you were on the ground?

25 A I don't remember.

Page 284

1 Q How long were you on the ground?

2 A You already asked me that.

3 Q You don't remember? Is that the answer, "I  
4 don't remember"?

5 A Yes. I don't remember.

6 Q Okay. All right. When you got up off the  
7 ground, what did you do? Did you discharge your TASER  
8 again?

9 A Yes, sir, I did. And that's when he went  
10 away from me. He got on his knees. And that's when  
11 Deputy Spurgeon attempted to take him into custody.

12 Q Okay. Now, the record will reflect that you  
13 were reading your incident report; is that correct?

14 A Yes, sir.

15 Q Is that Exhibit No. 1?

16 A It is.

17 Q Okay. All right. So is it fair to say that  
18 you could not remember the answer to that question when  
19 I asked it so then you referred to your incident  
20 report?

21 A It's fair to say, yes.

22 Q Okay. So that's why you needed, to refer to  
23 the report, because you can't remember; is that right?

24 A I don't remember exactly what I did minute by  
25 minute, no.

Page 285

1 Q Okay. Now, what was he doing when you were  
2 first able to determine that he had some white foam in  
3 his mouth?

4 A I believe it was as he was running at me. I  
5 don't remember.

6 Q Okay. So you observed him yelling things,  
7 hiding, flailing his arms first? Those were the three  
8 facts you observed first, correct?

9 A In regard -- I mean, I observed a lot of  
10 things.

11 MS. NGUYEN: Object to form.

12 BY MR. SPURLIN:

13 Q Okay. Well, I was asking --

14 A That was not the first thing I observed, no.

15 Q Okay. You didn't observe when he was by the  
16 building any white foam in his mouth?

17 A No, sir.

18 Q You couldn't see him well from that distance,  
19 right?

20 A No, sir.

21 Q You couldn't see white foam when he was  
22 behind the backhoe?

23 A No, sir.

24 Q You couldn't see the white foam until he got  
25 close to you, right?

72 (Pages 282 to 285)

Page 286

1 A That would be my assumption, yes.  
 2 Q How close?  
 3 A I don't know.  
 4 Q Okay. So the discharge of the TASER was not  
 5 because you had observed the white foam, correct?  
 6 A No, sir.  
 7 Q Okay. It was because of the other factors,  
 8 right?  
 9 A Yes.  
 10 Q Okay. Primarily running in your direction?  
 11 A He was running at me, not -- I mean.  
 12 Q Now, you said this morning that he  
 13 immediately charged straight towards you.  
 14 Do you remember when you saw the body cam  
 15 last, that he first ran to your left and then turned  
 16 and -- stopped and turned and then ran in your  
 17 direction?  
 18 MR. WILLIAMS: Object to form.  
 19 BY MR. SPURLIN:  
 20 Q Do you remember that?  
 21 A I don't. No, sir.  
 22 Q Do you remember him just swinging his arms  
 23 wildly and not drawing back like he was going to hit  
 24 you? Do you remember that behavior?  
 25 MR. WILLIAMS: Object to form.

Page 288

1 better of what I mean --  
 2 Q I know I can watch the video.  
 3 A -- by hands above his head.  
 4 Q I can also ask you questions.  
 5 A Okay. Yes, sir.  
 6 Q Do you remember if his hands were above his  
 7 head --  
 8 MR. WILLIAMS: If you can recall. It's  
 9 perfectly fine to say you don't recall.  
 10 THE WITNESS: No, sir, I don't remember.  
 11 MR. SPURLIN: Well, you can't coach him.  
 12 MR. WILLIAMS: No. I'm just reminding him  
 13 he's -- he doesn't have to respond to your  
 14 browbeating over something --  
 15 MR. SPURLIN: I'm not browbeating him.  
 16 MR. WILLIAMS: -- that's clearly shown in a  
 17 video.  
 18 MR. SPURLIN: So you don't want him to  
 19 remember anything, is that it?  
 20 MR. WILLIAMS: No. I'm just telling him if  
 21 he --  
 22 MR. SPURLIN: So you --  
 23 MR. WILLIAMS: He's struggling. He said  
 24 numerous times he doesn't recall. But you want to  
 25 keep --

Page 287

1 THE WITNESS: No, sir, I don't.  
 2 BY MR. SPURLIN:  
 3 Q Okay. Did you ever see him draw his fist  
 4 back to strike you?  
 5 A That's not -- no, sir. No. But that's not  
 6 the only way to strike somebody to cause injury.  
 7 Q I understand that.  
 8 A Okay.  
 9 Q Did you ever see him draw his hands back in  
 10 any way that made you think he was going to strike you?  
 11 A I absolutely thought he was going to strike  
 12 me. That's the reason that I deployed my TASER.  
 13 Q What did he do? What makes you think he's  
 14 fixing to hit me?  
 15 A The fact that he was running at me with his  
 16 arms above his head.  
 17 Q Above his head, like this, hands up?  
 18 MR. WILLIAMS: Object to form.  
 19 THE WITNESS: You can watch the video and  
 20 see.  
 21 MS. NGUYEN: Join.  
 22 BY MR. SPURLIN:  
 23 Q I'm asking what you remember.  
 24 A Sir, and I'm telling you that you can watch  
 25 the video because it's going to be able to articulate

Page 289

1 MR. SPURLIN: Not that. Not that.  
 2 MR. WILLIAMS: Yes, he has.  
 3 BY MR. SPURLIN:  
 4 Q So you don't remember where his arms were?  
 5 You say you remember his arms being above his head, but  
 6 you can't remember where above his head, right?  
 7 A I don't remember in what nature, no.  
 8 Q That's an unnatural way to run; is it not?  
 9 A It is.  
 10 Q Okay. Did that make you think he was acting  
 11 irrationally?  
 12 A That made me believe that he intended to harm  
 13 me.  
 14 Q Okay. Now, running with your hands up does  
 15 not in and of itself suggest that you're going to hit  
 16 somebody, does it?  
 17 MR. WILLIAMS: Object to form.  
 18 THE WITNESS: No, sir. But, again, he wasn't  
 19 running with his hands straight up like that.  
 20 BY MR. SPURLIN:  
 21 Q Okay. So the reason you shot him was because  
 22 he was running towards you; is that right?  
 23 A I didn't shoot him.  
 24 MR. WILLIAMS: Object to form.  
 25 MS. NGUYEN: Join.

73 (Pages 286 to 289)



Page 290

1 BY MR. SPURLIN:

2 Q You didn't? You didn't deploy the TASER?

3 A That's not what you asked. You asked if I  
4 shot him.

5 Q You shot him with a TASER?

6 A I deployed my TASER, yes, sir.

7 Q Okay. All right. Now, at what point -- you  
8 said he was angry. At what point did you conclude that  
9 he was angry?

10 A Well, I mean, there were several reasons that  
11 I believe that. Number one, he was yelling.

12 Q Okay. Did he ever yell anything directly at  
13 you? Officer, I'm going to hurt you? Officer, I'm  
14 going to hit you?

15 A No, sir, he did not.

16 Q Did he ever yell anything that made you even  
17 think he was acknowledging your presence?

18 A No, sir, not verbally.

19 Q Okay. Did he ever say anything that made you  
20 think he was thinking rationally?

21 MR. WILLIAMS: Object to form.

22 Go ahead.

23 THE WITNESS: No, sir.

24 BY MR. SPURLIN:

25 Q Nothing he said made any sense to you, did

Page 291

1 it?

2 MR. WILLIAMS: Object to form.

3 THE WITNESS: No, sir.

4 BY MR. SPURLIN:

5 Q Okay. All right. And you said he was  
6 agitated.

7 What makes you think he was agitated?

8 A The same mannerisms that made me think he was  
9 aggressive.

10 Q Okay. Do you recall how long you were there  
11 before the interaction between you and him where he  
12 came towards you and you deployed your weapon?

13 A No, sir, I don't recall how long it was  
14 before I deployed my TASER.

15 Q Okay. Well, let's look at it. You keep  
16 saying you don't recall and look at the video, so let's  
17 look at it.

18 (Whereupon, video playing.)

19 Q All right. I'm going to stop it there and  
20 ask you some questions.

21 A Okay.

22 Q All right. The body camera seemed to  
23 indicate that as soon as your body camera was on, your  
24 TASER weapon was out.

25 Do you agree with that?

Page 292

1 A Yes, sir.

2 Q Okay. And did you have it armed at that  
3 point?

4 A It appears so. I don't -- I don't know.

5 Q And your camera, you said, backs up 30  
6 seconds, correct?

7 A Yes, sir.

8 Q So you would have applied it at about the 30  
9 second mark of this, right?

10 A Yes.

11 Q Now, when this one started, it looked like he  
12 was behind the backhoe; is that right?

13 A Yes, sir.

14 Q So the video does not capture him hitting the  
15 building; is that correct?

16 A That's correct.

17 Q And the video does not capture him leaning  
18 against the building, correct?

19 A Correct.

20 Q And you said the third thing, I think, was he  
21 ran to his right under the --

22 A Yes.

23 Q -- lean-to or near the backhoe; is that  
24 right?

25 A Correct.

Page 293

1 Q That's not captured on the video, is it?

2 A No, sir.

3 Q Okay. Do you know why you didn't immediately  
4 turn on your body camera at that point?

5 A No, sir. I mean, I guess just because of the  
6 circumstances with everything going on.

7 Q Does it mean you forgot to or you didn't  
8 think it was necessary?

9 A No, sir. That means I forgot to until we got  
10 to this point.

11 Q Isn't it the policy to always turn it on?

12 MR. WILLIAMS: Object to the form.

13 THE WITNESS: At what point?

14 BY MR. SPURLIN:

15 Q When you're having some encounter with  
16 someone.

17 MR. WILLIAMS: Object to form.

18 Go ahead.

19 THE WITNESS: It is, yes.

20 BY MR. SPURLIN:

21 Q Okay. All right. Let me back this up. And  
22 I'm not very good with computers, so I may have to  
23 watch it several times.

24 Here we go. And I'm going to stop it and ask  
25 you some questions.

74 (Pages 290 to 293)

Page 294

1 (Whereupon, video playing.)  
 2 Q All right. Let me stop right there. We've  
 3 gone eight seconds, right?  
 4 A Yes, sir.  
 5 Q You've already pulled out your TASER weapon,  
 6 correct?  
 7 A I just pulled it out, yeah.  
 8 Q And is it armed?  
 9 A I don't know at this point.  
 10 Q At that point, what had he done to make you  
 11 arm the weapon?  
 12 A Well, I mean, I can't see what's going on at  
 13 this point in the video.  
 14 Q All right. Well, he certainly hadn't done  
 15 anything threatening towards you, correct?  
 16 MR. WILLIAMS: Object to form.  
 17 BY MR. SPURLIN:  
 18 Q I'll play it again, if you need me. I mean,  
 19 at this point he --  
 20 MR. WILLIAMS: Asked and answered.  
 21 THE WITNESS: No. He hasn't threatened me at  
 22 this point, no.  
 23 BY MR. SPURLIN:  
 24 Q Okay. In fact, all he's done is hidden from  
 25 you, right?

Page 296

1 Q Okay. Have you at this point, in the first  
 2 15 seconds, tried to use any kind of deescalation  
 3 technique?  
 4 A No, sir.  
 5 Q Haven't spoken to him in a calm voice?  
 6 A I actually did initially, yes.  
 7 Q What did you say?  
 8 A I told him to stop.  
 9 Q Okay.  
 10 A And at that point is when he ran up behind  
 11 the backhoe bucket and started yelling and refused to  
 12 show me his hands. So at that point, deescalation is  
 13 out the window.  
 14 Q All right. Prior to you turning on your  
 15 camera, you had not attempted any deescalation  
 16 techniques?  
 17 A No, sir. I hadn't even made contact with him  
 18 at that point.  
 19 Q And prior to turning on your camera, he  
 20 hadn't done anything to justify you pulling your  
 21 weapon, correct?  
 22 A No, sir.  
 23 Q Okay.  
 24 (Whereupon, video playing.)  
 25 A And, I'm sorry, correction. He had -- I'm

Page 295

1 A And fled.  
 2 Q Do you think that's a crime?  
 3 MR. WILLIAMS: Object to form.  
 4 THE WITNESS: What, fleeing?  
 5 BY MR. SPURLIN:  
 6 Q (Nodding head affirmatively.)  
 7 A If you're obstructing my investigation, yes.  
 8 Q Okay.  
 9 (Whereupon, video playing.)  
 10 Q Now we're up to 11 seconds. He's hiding  
 11 behind the backhoe?  
 12 A Right.  
 13 Q At this point, has he done anything  
 14 threatening toward you?  
 15 A Well, at this point, I don't know what's  
 16 behind that backhoe bucket.  
 17 Q You know it's him?  
 18 A I don't know what he's got in his hands. I  
 19 don't know what he has behind that bucket. At this  
 20 point, I don't know if he has anything that he is able  
 21 to use against me offensively.  
 22 Q Okay. All right. We're to the 15 second  
 23 mark. At about the 14 second mark, you said "Show me  
 24 your hands"?  
 25 A Yes, sir.

Page 297

1 sorry. You said prior to me turning on my camera, he  
 2 had not done anything to warrant me pulling my TASER?  
 3 Q Right.  
 4 A Okay. Well, that's incorrect because prior  
 5 to me turning my camera on, he fled away from me, which  
 6 in itself is not -- is not a crime.  
 7 However, you know, the nature of the call,  
 8 not knowing who he is, not being able to identify who  
 9 he is and him fleeing away from me, it definitely  
 10 heightens my alert.  
 11 Q Okay. So if you walked up to me on the  
 12 street and give me a command and I just walk away to  
 13 get in my car, do you think I've committed a crime?  
 14 MR. WILLIAMS: Object to form.  
 15 THE WITNESS: That's not the same situation  
 16 as this.  
 17 BY MR. SPURLIN:  
 18 Q I know. I'm just asking you.  
 19 Have I?  
 20 A If I walk up to you to talk to you on the  
 21 street and you walk away from me, no, sir.  
 22 Q Okay. Well -- okay.  
 23 (Whereupon, video playing.)  
 24 Q All right. We're to 31 seconds.  
 25 At this point, has he done anything

75 (Pages 294 to 297)

Page 298

1 threatening towards you?  
 2 A No, sir.  
 3 Q Okay. Now, you were asked by Ms. Nguyen was  
 4 there any hurry to apprehend him.  
 5 There was not?  
 6 A No.  
 7 Q You could have simply waited until another  
 8 deputy arrived?  
 9 A Yes, sir.  
 10 Q Okay. I want to show you a document before I  
 11 turn that back on and ask you a question to make sure I  
 12 understand.  
 13 Do you have in front of you your Exhibit 3 on  
 14 the TASER application, page nine?  
 15 MR. WILLIAMS: TASER application? You mean  
 16 the log thing?  
 17 MR. SPURLIN: The electrical impulse.  
 18 MS. NGUYEN: Event log.  
 19 MR. WILLIAMS: Event log.  
 20 THE WITNESS: Yes.  
 21 BY MR. SPURLIN:  
 22 Q All right. Look at the ninth page with me,  
 23 if you will. You were asked questions by Ms. Nguyen  
 24 about number -- line number 249.  
 25 Do you see that?

Page 300

1 A Five seconds.  
 2 Q Okay. So it says at 05:04 and 16 seconds you  
 3 pulled the trigger and he got a five second duration,  
 4 which would have taken --  
 5 MR. WILLIAMS: Object.  
 6 BY MR. SPURLIN:  
 7 Q -- you to 05:04 and 21 seconds, right?  
 8 MR. WILLIAMS: Object to form.  
 9 THE WITNESS: Yes, sir. That's correct.  
 10 BY MR. SPURLIN:  
 11 Q And then one second later, at 05:04 and 22  
 12 seconds, you pulled the trigger a second time, right?  
 13 A Yes, sir.  
 14 Q One second after the five second duration,  
 15 correct?  
 16 A Yes, sir.  
 17 Q And then that five second duration would have  
 18 taken you up to 05:04 and 27 seconds, correct?  
 19 A Correct.  
 20 Q And then eight seconds later, you pulled the  
 21 trigger a third time, correct?  
 22 A Yes, sir.  
 23 Q And he got a five second duration that time,  
 24 which would take you up to 05:04 and 40 seconds,  
 25 correct?

Page 299

1 A I do.  
 2 Q That's when you armed it at 05:03 and 40  
 3 seconds, correct?  
 4 A Yes, sir.  
 5 Q And then when was the first time you pulled a  
 6 trigger?  
 7 A 05:04:16.  
 8 Q So it was armed with the safety off for 36  
 9 seconds before you shot the first time, correct?  
 10 A Yes, sir.  
 11 Q Okay. And then you applied the trigger and  
 12 he got a five second duration, correct?  
 13 MS. NGUYEN: Object to form.  
 14 THE WITNESS: I deployed the -- I deployed  
 15 the trigger, yes. I pulled the trigger and the --  
 16 it appears that he would have --  
 17 BY MR. SPURLIN:  
 18 Q Would have received a five second charge?  
 19 MR. WILLIAMS: Object to form.  
 20 MS. NGUYEN: Object to form, foundation.  
 21 THE WITNESS: It appeared he would have, if  
 22 the TASER was effective.  
 23 BY MR. SPURLIN:  
 24 Q All right. Then how many seconds later did  
 25 you pull the trigger the second time?

Page 301

1 MR. WILLIAMS: Object to form.  
 2 THE WITNESS: Yes, but --  
 3 MS. NGUYEN: Join.  
 4 BY MR. SPURLIN:  
 5 Q I'm sorry, yes?  
 6 A The time frame is correct, but you keep  
 7 saying that he got a five second duration. I don't  
 8 agree with that.  
 9 Q Does that mean the weapon was sending out a  
 10 charge for five seconds?  
 11 A For five seconds, yes. That is correct.  
 12 Q Okay. And then at six seconds later,  
 13 05:04:46, you pulled the trigger the fourth time,  
 14 correct?  
 15 A Yes, sir.  
 16 Q And the machine sent out another five second  
 17 duration, correct?  
 18 A Correct.  
 19 Q Okay. So your application of the trigger  
 20 occurred four times for a 20 second duration, correct?  
 21 A Correct.  
 22 Q Okay. Back to back to back to back, right?  
 23 MR. WILLIAMS: Object to form.  
 24 MS. NGUYEN: Object to form.  
 25 THE WITNESS: Not necessarily, no.

76 (Pages 298 to 301)

Page 302

1 BY MR. SPURLIN:

2 Q Well, there's a one second difference the  
3 first time and a, what, five second difference the last  
4 time?

5 A Yes, sir.

6 Q Is that right?

7 A Yes, sir.

8 Q Okay. All right. I'm going to back -- show  
9 the video again.

10 (Whereupon, video playing.)

11 Q All right. We're up to 35 seconds. At this  
12 point, he hasn't done anything threatening toward you,  
13 correct?

14 A Correct.

15 Q Okay. All he's done is hid from you; is that  
16 right?

17 A Correct.

18 MS. NGUYEN: Object to form.

19 BY MR. SPURLIN:

20 Q And acting irrationally; is that right?

21 A Correct.

22 Q Acting irrationally?

23 A But, again, I don't know if he has any  
24 weapons behind that backhoe bucket.

25 Q Okay.

Page 303

1 A Or on his person.

2 (Whereupon, video playing.)

3 Q All right. Now, do you see him running to  
4 the -- to your left?

5 And I'll back it up because I messed that up.

6 (Whereupon, video playing.)

7 Q All right. I'm going to try and start it at  
8 35 seconds. This is 33, okay.

9 (Whereupon, video playing.)

10 Q Does he run to your left first?

11 A I would -- I would say that he -- my  
12 perception is he is just clearing that backhoe bucket,  
13 that he is -- I don't believe that he is running to his  
14 left or to my left.

15 Q Okay.

16 A It looks like he takes a couple of steps to  
17 clear that backhoe bucket.

18 Q Okay. Now, did it appear that the movements  
19 of his hands were slapping at the TASER?

20 MR. WILLIAMS: Object to form.

21 THE WITNESS: No, sir.

22 BY MR. SPURLIN:

23 Q Did he strike the TASER?

24 A Not that I recall, no, sir.

25 Q Okay. I want you to look and tell me what

Page 304

1 he's doing the second time you apply the TASER trigger,  
2 okay?

3 (Whereupon, video playing.)

4 Q Have you shot more than once at that point or  
5 just once?

6 A I don't know.

7 Q Can you tell?

8 A I don't know.

9 Q Okay.

10 (Whereupon, video playing.)

11 Q All right. Now, he's on the ground, and you  
12 can hear the weapon deploying electric, correct?

13 A Yes, sir.

14 Q Okay. Is that the point when you thought he  
15 was compliant?

16 A Yes, sir.

17 Q Can you tell at that point if you have  
18 deployed the trigger more than once?

19 A It sounds like that was the second time.

20 Q Okay.

21 (Whereupon, video playing.)

22 Q At this point, we're at the 1-0 something  
23 mark, two mark.

24 Have you made any determination in your mind  
25 as to how many times you've tased him?

Page 305

1 A No, sir.

2 MR. WILLIAMS: Object to form.

3 BY MR. SPURLIN:

4 Q And have you, in your mind, determined that  
5 it matters how many times you've tased him or it  
6 matters how long you've tased him?

7 A No, sir. At this point, he is still actively  
8 coming at me.

9 Q And consistent with your prior testimony, you  
10 think you can tase him an unlimited amount of time for  
11 an unlimited duration to obtain control of him?

12 A No, sir.

13 MS. NGUYEN: Object to form.

14 MR. WILLIAMS: Object to form.

15 THE WITNESS: I didn't say that.

16 BY MR. SPURLIN:

17 Q What is your testimony?

18 A My testimony was I can -- I can tase him  
19 until the point that he is no longer a threat to me.  
20 And at that point, he is still a threat.

21 Q And you think you can tase him an unlimited  
22 amount of times for an unlimited duration until he's no  
23 longer a threat to you?

24 A Yes, sir.

25 Q Okay.

77 (Pages 302 to 305)

Page 306

1 (Whereupon, video playing.)  
 2 Q And you just tased him a fourth time?  
 3 A And that was where he knocked me to the  
 4 ground.  
 5 Q Is he complying at that point?  
 6 A It is my belief that he is going to.  
 7 Q All right.  
 8 A He got on his knees, and it is my belief that  
 9 he is going to. But at that point, no, he is not  
 10 compliant.  
 11 Q Well, you've testified repeatedly that you  
 12 don't think the weapon had any effect on him at all,  
 13 right?  
 14 A Correct.  
 15 Q Why would he have gotten on the ground twice  
 16 if he felt no electrical charge and he had no effect on  
 17 him?  
 18 MR. WILLIAMS: Object to form.  
 19 MS. NGUYEN: Form and foundation.  
 20 THE WITNESS: Sir, I'm --  
 21 MR. SPURLIN: I don't understand the  
 22 foundation when he would know the answer to that.  
 23 MR. WILLIAMS: He can't -- he can't  
 24 possibly --  
 25 MS. NGUYEN: No, he can't.

Page 308

1 Mr. McBrayer --  
 2 BY MR. SPURLIN:  
 3 Q What?  
 4 A You asked me why Mr. McBrayer got on his  
 5 knees. I don't know why Mr. McBrayer got on his knees.  
 6 Only he would know that.  
 7 Q Okay. And you don't believe --  
 8 MS. NGUYEN: He also testified that he  
 9 thought he was going to comply. So he can testify  
 10 to him impressions. He can't testify to what --  
 11 why Mr. McBrayer did something.  
 12 MR. SPURLIN: Well, you asked him every one  
 13 of those, what did he think he was doing.  
 14 MS. NGUYEN: I'm not going to argue with you.  
 15 MR. SPURLIN: Well, you are arguing with me.  
 16 MS. NGUYEN: The record speaks for itself.  
 17 We objected to form.  
 18 MR. SPURLIN: I understand.  
 19 MS. NGUYEN: And explained why.  
 20 BY MR. SPURLIN:  
 21 Q So at this point in time, did you know how  
 22 many times you had applied your TASER?  
 23 A No, sir, I did not.  
 24 Q Okay. When Spurgeon arrived, did you ever  
 25 explain to him that you thought Mr. McBrayer was having

Page 307

1 MR. WILLIAMS: -- know the answer to what he  
 2 was thinking.  
 3 THE WITNESS: I can't speak --  
 4 MS. NGUYEN: You keep him asking him why he  
 5 did something.  
 6 THE WITNESS: I can't speculate why  
 7 Mr. McBrayer did anything.  
 8 BY MR. SPURLIN:  
 9 Q Okay. Well, you've reached conclusions as to  
 10 all of his other activities. You've reached a  
 11 conclusion that you thought he was going to harm you  
 12 and you thought he was going to assault you, and you  
 13 thought he was going to flee.  
 14 Why can you reach all of those conclusions as  
 15 to his behavior, but when I ask a question about what  
 16 his behavior is, you can't reach a conclusion? Explain  
 17 that to me.  
 18 MR. WILLIAMS: Object to form.  
 19 THE WITNESS: You're asking me to --  
 20 MR. WILLIAMS: You didn't. You asked him why  
 21 he would do something, not what his behavior was.  
 22 That's totally improper.  
 23 MR. SPURLIN: I don't even think that was the  
 24 question.  
 25 THE WITNESS: You asked me why

Page 309

1 a mental illness episode?  
 2 A I never stated I thought he was having a  
 3 mental illness episode.  
 4 Q Did you explain to Spurgeon, when you all  
 5 were trying to handcuff him, that you thought he was  
 6 under the influence of a drug?  
 7 A I don't think so, no.  
 8 Q Okay. Did you ever give any recitation of  
 9 what had happened to Spurgeon before he arrived?  
 10 A Before Deputy Spurgeon arrived?  
 11 MR. WILLIAMS: What?  
 12 BY MR. SPURLIN:  
 13 Q When Deputy Spurgeon arrived, did you ever  
 14 say, hey, he did this, he did that?  
 15 A No, sir.  
 16 Q Did you fill Spurgeon in?  
 17 A No, sir. I mean, at what point would I have  
 18 had to do that?  
 19 Q Okay. Well, you all were laying on the  
 20 ground with him for ten minutes, right?  
 21 MR. WILLIAMS: Object to form.  
 22 MS. NGUYEN: Object to form.  
 23 BY MR. SPURLIN:  
 24 Q Having a conversation, right?  
 25 A No, sir, we weren't having a conversation.

78 (Pages 306 to 309)



Page 310

1 MR. WILLIAMS: Object to form.  
 2 BY MR. SPURLIN:  
 3 Q Okay. All right. Did you ever at any point,  
 4 while he was on the ground, check Mr. McBrayer's vital  
 5 signs?  
 6 A No, sir.  
 7 Q Did you at any point try to measure his  
 8 pulse?  
 9 A No, sir.  
 10 Q Okay. At that point in time, did he appear  
 11 to be exhausted?  
 12 A I mean, I don't know.  
 13 Q Was he breathing heavily?  
 14 A Yes.  
 15 Q Was he gasping for breath?  
 16 A No.  
 17 MR. WILLIAMS: Object to form.  
 18 THE WITNESS: Not that I recall.  
 19 BY MR. SPURLIN:  
 20 Q Okay. What -- were you tired from the  
 21 ten-minute struggle?  
 22 A I was.  
 23 Q Okay. Was Deputy Spurgeon breathing  
 24 difficult -- with difficulty?  
 25 MR. WILLIAMS: Object to form.

Page 312

1 the ones that assisted him picking him up.  
 2 Q Okay. How did he appear when he was picked  
 3 up?  
 4 A When we picked him up, he appeared to go  
 5 limp.  
 6 Q Okay. Was he talking at that point?  
 7 A No, sir.  
 8 Q He had been talking continuously from the  
 9 beginning of your encounter until that time, correct?  
 10 A Yes, sir.  
 11 Q How long before you all hobble strapped him  
 12 before he stopped talking?  
 13 A I don't know.  
 14 Q Okay. But he was no longer talking before  
 15 you all picked him up, right?  
 16 MR. WILLIAMS: Object to form.  
 17 THE WITNESS: I don't know. I don't recall  
 18 that.  
 19 BY MR. SPURLIN:  
 20 Q Do you know what body part you got to pick  
 21 him up?  
 22 A I picked up his -- I believe it was his right  
 23 arm.  
 24 Q Okay. Who had his left arm?  
 25 A I don't know.

Page 311

1 THE WITNESS: You would have to ask Deputy  
 2 Spurgeon that.  
 3 BY MR. SPURLIN:  
 4 Q You don't remember him gasping for breath or  
 5 trying to catch his breath?  
 6 MR. WILLIAMS: Object to form.  
 7 THE WITNESS: No, sir.  
 8 BY MR. SPURLIN:  
 9 Q What about Mr. McBrayer, was he having  
 10 difficulty breathing when he was on the ground?  
 11 A Not that I identified, no.  
 12 Q Okay. Before he was taken to the vehicle,  
 13 did you ever check his vitals?  
 14 A No, sir.  
 15 Q Did you ever measure his pulse?  
 16 A No, sir. Not before he went to the vehicle,  
 17 no.  
 18 Q Did anyone else?  
 19 A No, sir.  
 20 Q Okay. Did anyone call in on the radio to  
 21 send EMS for Mr. McBrayer?  
 22 A We called in that the TASER was deployed.  
 23 Q Okay. Now, do you know who picked him up and  
 24 loaded him in the car?  
 25 A No, sir. I know that I was -- I was one of

Page 313

1 Q Well, was he -- was he picked up facedown?  
 2 A Yes, sir.  
 3 Q Okay. By his arms?  
 4 A By his upper arms.  
 5 Q So he was picked up and his arms went way up  
 6 behind him; is that right?  
 7 MR. WILLIAMS: Object to form.  
 8 THE WITNESS: I don't -- I don't know. I  
 9 don't remember.  
 10 BY MR. SPURLIN:  
 11 Q You saw the body cam when, last night?  
 12 A Yes, sir.  
 13 Q You didn't see how he was picked up by his  
 14 arms with him handcuffed facedown?  
 15 MR. WILLIAMS: Object to the form.  
 16 THE WITNESS: No, sir. I don't know exactly  
 17 how he was picked up, no.  
 18 BY MR. SPURLIN:  
 19 Q Do you all have any procedures for how you  
 20 lift unconscious people and put them in cars?  
 21 MR. WILLIAMS: Object to form.  
 22 THE WITNESS: Not that I'm aware of, no.  
 23 BY MR. SPURLIN:  
 24 Q Was he passed out at the point you picked him  
 25 up?

79 (Pages 310 to 313)

Page 314

1 A I don't know that he was passed out. It was  
 2 my belief that he was, yes.  
 3 Q Okay. He wasn't speaking?  
 4 A Correct.  
 5 Q He wasn't resisting?  
 6 A Correct.  
 7 Q He was limp?  
 8 A Correct.  
 9 Q Okay. Who decided he needed to be put in the  
 10 car?  
 11 A I don't know the answer to that.  
 12 Q Why did he need to be put in the car?  
 13 A Because at that point, we still had not  
 14 completed investigating why we were out there to begin  
 15 with.  
 16 Q Okay. Laying on the ground limp, handcuffed,  
 17 and hobble strapped and passed out, would he have been  
 18 dangerous to anyone?  
 19 MR. WILLIAMS: Object to form.  
 20 THE WITNESS: In that condition, not  
 21 necessarily. However, again, it was my assumption  
 22 that he was passed out. I don't know that to be  
 23 fact or I didn't know that to be fact.  
 24 BY MR. SPURLIN:  
 25 Q Okay. If he were awake but handcuffed and

Page 315

1 hobble strapped, would he have been dangerous to anyone  
 2 laying on the ground?  
 3 A Potentially.  
 4 Q How? How could a handcuffed, hobble strapped  
 5 person laying on the ground harm any of you five  
 6 deputies?  
 7 A Well, he's got teeth in his mouth. He could  
 8 bite you.  
 9 Q You would have to go up and put your hand  
 10 near his mouth, right?  
 11 A I mean, you didn't ask all of that. You  
 12 asked how he could harm you, and I'm telling you how he  
 13 can harm you.  
 14 Q Okay. How else?  
 15 A I mean, he's got feet, he can kick you.  
 16 Q He's hobble strapped, right?  
 17 A Correct, he is hobble strapped, which means  
 18 he's going to kick you with the force of two feet, not  
 19 just one.  
 20 Q If you walk up within the distance of him  
 21 kicking you, right?  
 22 MR. WILLIAMS: Object to form.  
 23 THE WITNESS: Again, your question to me was  
 24 how can he harm me.  
 25 BY MR. SPURLIN:

Page 316

1 Q Okay.  
 2 A Okay. I'm telling you how he can harm you.  
 3 Q All right. That night limp, passed out,  
 4 handcuffed and hobble strapped, how could he have  
 5 harmed any deputy?  
 6 MR. WILLIAMS: Object to form.  
 7 BY MR. SPURLIN:  
 8 Q He wasn't dangerous at that point?  
 9 A Okay.  
 10 Q Do you agree?  
 11 MR. WILLIAMS: He's asking at the point that  
 12 all those conditions are met.  
 13 BY MR. SPURLIN:  
 14 Q Was he dangerous at that point?  
 15 A No.  
 16 Q Was he dangerous when you all picked him up  
 17 and put him in the car?  
 18 A No.  
 19 Q Okay. Why did he have to be in the car? Why  
 20 couldn't you leave him on the ground?  
 21 MR. WILLIAMS: Object to form.  
 22 MR. SPURLIN: What's wrong with the form?  
 23 THE WITNESS: "Why could" calls for  
 24 speculation, I mean.  
 25 MR. SPURLIN: He's the officer who makes the

Page 317

1 decisions.  
 2 MR. WILLIAMS: I'm objecting to form.  
 3 MR. SPURLIN: That is not speculation. You  
 4 can object to every one. Go ahead.  
 5 MR. WILLIAMS: Yeah, I can.  
 6 THE WITNESS: Well, again, I just told you I  
 7 don't know who made the decision to put him in the  
 8 car.  
 9 BY MR. SPURLIN:  
 10 Q Okay.  
 11 A I didn't make that decision that I'm aware  
 12 of.  
 13 Q I understand.  
 14 If you had of made the decision, was there  
 15 any absolute reason he needed to be loaded into the  
 16 car?  
 17 MR. WILLIAMS: Object to form.  
 18 THE WITNESS: I mean, you're asking me a  
 19 hypothetical situation.  
 20 BY MR. SPURLIN:  
 21 Q You were there. Was there any reason he had  
 22 to be loaded into the car?  
 23 MR. WILLIAMS: Object to form.  
 24 THE WITNESS: But what I'm telling you is I'm  
 25 here to answer facts of the case, not

80 (Pages 314 to 317)

Page 318

Page 319

1 hypotheticals.

2 BY MR. SPURLIN:

3 Q This is facts of the case. Was there any  
4 reason that he had to be loaded into the car at that  
5 point?

6 MR. WILLIAMS: Object to form.

7 THE WITNESS: That -- you would have to ask  
8 whoever made the decision to load him into the  
9 car.

10 BY MR. SPURLIN:

11 Q Did you know of any facts that necessitated  
12 him being loaded into the car at that time?

13 A At that point, no. However --

14 Q Okay. Didn't he need medical care at that  
15 point?

16 MR. WILLIAMS: Object to form.

17 THE WITNESS: Not that I was aware of, no.

18 BY MR. SPURLIN:

19 Q You didn't believe at that point limp, passed  
20 out, handcuffed, hobble strapped, and tased six times  
21 with 30 second duration necessitated him being seen for  
22 medical care and evaluation?

23 MR. WILLIAMS: Object to form.

24 THE WITNESS: First, you keep going back to  
25 the tased for 30 seconds. But you can see clearly

1 in the video that those were not effective because  
2 of the sound coming from the TASER.

3 BY MR. SPURLIN:

4 Q Okay.

5 A Okay. Number two, I've seen defendants, I've  
6 seen -- I've seen suspects go limp just because they  
7 don't want to comply and get in the vehicle, which was  
8 not -- I mean, he hadn't complied to that point.

9 Q Have you ever seen anyone tased six times for  
10 30 seconds?

11 A I've never seen anybody tased at all --

12 Q Okay.

13 A -- before this.

14 Q So you really didn't have any training and  
15 experience provided by the sheriff's department to help  
16 you evaluate his need for medical care and attention,  
17 correct?

18 MR. WILLIAMS: Object to form.

19 THE WITNESS: I didn't believe at that point  
20 that there was any need for medical care because I  
21 didn't see any -- any distress, any signs of  
22 distress.

23 BY MR. SPURLIN:

24 Q Did Major Torres, or anyone else at the  
25 sheriff's department, ever tell you that someone who

Page 320

Page 321

1 has been tased more than twice for 15 seconds needs  
2 medical care and attention?

3 MR. WILLIAMS: Object to form.

4 THE WITNESS: Not that I recall, no, sir.

5 BY MR. SPURLIN:

6 Q Has Major Torres, or anyone else with the  
7 sheriff's department, ever told you that anyone tased  
8 more than twice for more than 15 seconds needs to be  
9 medically evaluated?

10 A That's the same question you just asked me.  
11 Not that I'm ware of, no.

12 Q Okay. You thought he needed to be medically  
13 evaluated yourself because of his irrational behavior,  
14 correct?

15 MR. WILLIAMS: Object to form.

16 THE WITNESS: No, sir, I never stated that.

17 MS. NGUYEN: Join.

18 BY MR. SPURLIN:

19 Q I'm asking you. Didn't you think that?

20 A No, sir. You're -- are you asking me or are  
21 you telling me?

22 Q Yeah.

23 Did you think he needed to be medically  
24 evaluated because of his behavior?

25 A Okay. No, sir, I did not.

1 Q Did you think he needed a mental health  
2 evaluation because of his behavior?

3 A No, sir, I did not.

4 Q Did you think he needed a medical evaluation  
5 because of potential drug use?

6 A No, sir, I did not.

7 Q Okay. So as we sit here today, having gone  
8 through there and seen the body camera footage, you  
9 don't believe Mr. McBrayer needed any medical care or  
10 evaluation at the time he was loaded into the car?

11 A Mr. Spurling, you're asking me --

12 MR. WILLIAMS: Object to form.

13 THE WITNESS: -- to look at something from  
14 hindsight, okay. And I can't do that because now  
15 I know all the facts and circumstances beyond that  
16 night, okay.

17 What I'm telling you is that night, given the  
18 situation, no, I did not see any need for medical  
19 attention.

20 BY MR. SPURLIN:

21 Q All right. Let me repeat what I think you  
22 said.

23 That night at the scene when he was loaded in  
24 the car, you did not believe he needed any medical  
25 attention, correct?

81 (Pages 318 to 321)

Page 322

1 A That is correct.  
 2 Q Now, having seen the video and knowing all  
 3 these facts, do you believe that he needed medical  
 4 attention when he was loaded into the car?  
 5 MR. WILLIAMS: Object to form.  
 6 THE WITNESS: I don't know that to be a fact.  
 7 MS. NGUYEN: Join.  
 8 THE WITNESS: I know obviously he did need  
 9 medical attention at some point. But at the point  
 10 that he was loaded into the car, I don't know  
 11 that.  
 12 BY MR. SPURLIN:  
 13 Q Okay. Do you believe that a person who's  
 14 passed out needs medical attention?  
 15 MR. WILLIAMS: Object to form.  
 16 THE WITNESS: Not necessarily, no.  
 17 BY MR. SPURLIN:  
 18 Q Do you believe the combination of someone  
 19 limp and passed out who he has been in at least a  
 20 ten-minute struggle and tased at least six times for 30  
 21 second durations needs to be medically evaluated?  
 22 MR. WILLIAMS: Object to form. Gosh, you've  
 23 asked this --  
 24 MS. NGUYEN: Join.  
 25 MR. WILLIAMS: -- question about ten times.

Page 324

1 A Yes, sir.  
 2 Q What did you check?  
 3 A I checked his corotid artery.  
 4 Q Okay. For his pulse?  
 5 A Yes, sir.  
 6 Q Okay. Did you measure it?  
 7 A No, sir, I didn't.  
 8 Q Did you -- how long did you keep your finger  
 9 there to measure it?  
 10 A Just a few seconds.  
 11 Q Okay. I don't know what a few means to you.  
 12 A I don't know exactly how long.  
 13 Q Less than five?  
 14 A I'm not -- I don't remember.  
 15 Q You didn't try to compute his pulse rate per  
 16 minute?  
 17 A No, sir.  
 18 Q Did you record what his pulse rate was?  
 19 A No, sir.  
 20 Q Was it normal or abnormal?  
 21 A It felt a little rapid.  
 22 Q A little rapid meaning what?  
 23 A Like it was a little fast, I mean.  
 24 Q Do you normally take people's pulses?  
 25 A I take mine all the time.

Page 323

1 MR. SPURLIN: It's different.  
 2 THE WITNESS: Sir, again --  
 3 BY MR. SPURLIN:  
 4 Q Yes or no first.  
 5 A I'm not going to answer that yes or no.  
 6 Q You got to.  
 7 THE VIDEOGRAPHER: I have to change tapes.  
 8 MR. WILLIAMS: No, he doesn't if he doesn't  
 9 feel like he can.  
 10 MS. NGUYEN: All right.  
 11 THE VIDEOGRAPHER: I have to change tapes.  
 12 MR. SPURLIN: Okay.  
 13 THE VIDEOGRAPHER: I'm sorry. This is the  
 14 end of medium number four of the deposition of  
 15 Deputy Anthony Tripp. The time is 5:17. We are  
 16 going off the record.  
 17 (Whereupon, a recess was taken.)  
 18 THE VIDEOGRAPHER: This is the beginning of  
 19 medium number five in the deposition of Deputy  
 20 Anthony Tripp. The time is 5:25. We're on the  
 21 record.  
 22 BY MR. SPURLIN:  
 23 Q Deputy Tripp, at some point you walked to the  
 24 car where he was and say you checked his vital signs;  
 25 is that correct?

Page 325

1 MR. WILLIAMS: Object to the form. I don't  
 2 know what normally means.  
 3 MR. SPURLIN: That's what I'm trying to get  
 4 at.  
 5 MR. WILLIAMS: Experience.  
 6 BY MR. SPURLIN:  
 7 Q I don't know what normally is. Is it more  
 8 than 50 beats a minute or is more than 80 beats a  
 9 minute? What does a little rapid mean to you?  
 10 A A little rapid to me means that it was  
 11 obvious that he was just in a -- in a physical type  
 12 altercation and his heart rate was a little higher than  
 13 it would be at rest.  
 14 Q Okay. A little rapid or a lot rapid?  
 15 A I would say it was a little rapid.  
 16 Q Okay. Now, how many minutes after the  
 17 altercation was over and he was put in the car was it  
 18 before you went and checked his pulse?  
 19 A I'm not sure.  
 20 Q It was several minutes, wasn't it?  
 21 A Yes, sir, it was.  
 22 Q Okay. So there was time for his pulse rate  
 23 to return to normal?  
 24 A I mean, I don't know at what rate his pulse  
 25 would return to normal.

82 (Pages 322 to 325)

Page 326

1 Q So you don't know whether his was rapid for  
2 him or not?  
3 A Correct.  
4 Q And you didn't call in to anybody and say,  
5 hey, he's got a rapid pulse?  
6 A No, sir.  
7 Q And at that point, did you try to determine  
8 how many breaths per minute he was taking?  
9 A No, sir.  
10 Q Did you try to determine if he was breathing  
11 at all?  
12 A I couldn't see if he was breathing or not by  
13 the way he was.  
14 Q Now, was he laying on his side or on his  
15 back?  
16 A He was laying on his side.  
17 Q His left side or his right side?  
18 A It would have been his left side.  
19 Q So his face was facing the front of the  
20 vehicle?  
21 A Correct.  
22 Q Okay. And when you reached in, you got his  
23 pulse on the right side of his neck?  
24 A Yes, sir.  
25 Q He would have been laying on the left side of

Page 327

1 his neck?  
2 A Yes, sir.  
3 Q And at that point, his hands were still  
4 behind his back?  
5 A Yes, sir.  
6 Q So his mouth wasn't far from where your hand  
7 was to check his pulse, right?  
8 A No, sir.  
9 Q What I said was false?  
10 MR. WILLIAMS: Object to form.  
11 BY MR. SPURLIN:  
12 Q Was the -- was your hand near his mouth when  
13 you took his pulse?  
14 A Yes, sir.  
15 Your question was my hand was not far from  
16 his mouth. And I said, no, it was not. No, sir.  
17 Q Okay. You agree that it was not far?  
18 A I agree with you, yes.  
19 Q Did you feel any breath coming in his mouth  
20 or nose?  
21 A Honestly, I didn't check.  
22 Q You didn't check?  
23 A No, sir.  
24 Q Was he, at that point, attempting to breathe  
25 or gasping for breath that you could observe?

Page 328

1 A No, sir.  
2 Q Okay. Did you attempt to determine if he was  
3 breathing?  
4 A No, sir. Again, I didn't -- I didn't see.  
5 Q How would one determine if he was trying to  
6 breathe?  
7 A You would look for rising and falling in the  
8 chest.  
9 Q Okay. What about just sticking your hand in  
10 front of his nose? Couldn't you feel the air coming in  
11 and out?  
12 MR. WILLIAMS: Object to form.  
13 THE WITNESS: I mean, I assume you could.  
14 BY MR. SPURLIN:  
15 Q You didn't do that?  
16 A No, sir.  
17 Q Okay. Did you do anything else to evaluate  
18 him at that time?  
19 A Sir, I'm not -- I'm not medical personnel.  
20 Q I know that.  
21 I'm just asking, you didn't make any attempt  
22 to do anything but take a pulse, right?  
23 A Correct.  
24 Q Why did you do that?  
25 A To ensure that he was okay.

Page 329

1 Q But that wasn't what you were assigned to do?  
2 Hancock was assigned to do that, right?  
3 A I was the one that told Deputy Hancock to do  
4 that, so I -- there -- there is no specific  
5 assignments. I mean, we -- we don't have a roster that  
6 says Deputy Tripp checks this, Deputy Hancock checks  
7 this.  
8 Q Okay.  
9 A I think that the intent and the idea behind  
10 it was to ensure that somebody checked on him multiple  
11 times, regardless of who did that.  
12 Q When you walked up to take his pulse, isn't  
13 it true that Henderson was there --  
14 A He was.  
15 Q -- and checked him?  
16 Why did Henderson need you if he's checking  
17 him?  
18 A Sir, that would be a question for Captain  
19 Henderson.  
20 Q But you chose -- you didn't get summoned, you  
21 chose to go over there while Henderson was evaluating  
22 him, correct?  
23 A Yes, sir.  
24 Q And you reached in while Henderson was doing  
25 that and said, oh, he's got a pulse, right?

83 (Pages 326 to 329)



Page 330

1 MR. WILLIAMS: Object to form.  
 2 THE WITNESS: I mean, I don't know exactly  
 3 what was said or what transpired.  
 4 BY MR. SPURLIN:  
 5 Q Okay. Did you conclude that Henderson  
 6 couldn't make an evaluation himself without your  
 7 assistance?  
 8 A No, sir. I mean, that's -- that's not my  
 9 conclusion to make.  
 10 Q Okay. Well, then why did you go over there  
 11 if Henderson was doing that?  
 12 A I don't know, sir.  
 13 Q Okay. All right. I want to show you some  
 14 more of this video.  
 15 (Whereupon, video playing.)  
 16 Q All right. At that point, do you have your  
 17 hand on his neck holding him down?  
 18 MR. WILLIAMS: Object to form.  
 19 THE WITNESS: I have my hand on his neck.  
 20 BY MR. SPURLIN:  
 21 Q Okay. Keeping him from getting up?  
 22 A Yes, sir.  
 23 MR. WILLIAMS: Object to form.  
 24 BY MR. SPURLIN:  
 25 Q Okay. And how close to the ground is his

Page 331

1 face?  
 2 A I mean, his face is turned.  
 3 Q Okay. I mean, is his face on the ground?  
 4 MR. WILLIAMS: Object to form.  
 5 THE WITNESS: His cheek appears to be, yes.  
 6 BY MR. SPURLIN:  
 7 Q Okay. Now, the autopsy report referred to  
 8 some contusions and abrasions to his face.  
 9 Is that when he was on the ground?  
 10 MR. WILLIAMS: Object to form.  
 11 THE WITNESS: I can't -- I don't know.  
 12 BY MR. SPURLIN:  
 13 Q You don't know of any other cause?  
 14 MR. WILLIAMS: Object to form.  
 15 THE WITNESS: I mean, you stated earlier he  
 16 was involved in a motor vehicle accident.  
 17 BY MR. SPURLIN:  
 18 Q Okay.  
 19 A So, I mean, if there was abrasions and  
 20 contusions on his face, they could have come from that.  
 21 I don't know.  
 22 Q Okay. Did you at any point in time, when you  
 23 were on the ground trying to handcuff him, ask him his  
 24 name?  
 25 A No.

Page 332

1 Q Did you ever say, hey, man, we're here to  
 2 help you? Were you in a car wreck?  
 3 A No, sir.  
 4 Q Did you ever say, don't fight us, man, we're  
 5 here to help you?  
 6 A No sir.  
 7 (Whereupon, video playing.)  
 8 BY MR. SPURLIN:  
 9 Q Now, at that point does -- it appears  
 10 Spurgeon has his left arm?  
 11 A It does.  
 12 Q And you have him by the scruff of his neck?  
 13 A I had my hand on his neck, yes.  
 14 Q Okay. Where's your other hand?  
 15 A I don't know.  
 16 Q Where is your legs?  
 17 A I don't know.  
 18 Q Were you on top of him in any way?  
 19 A No, sir, I don't believe so.  
 20 Q Anybody sitting on his legs?  
 21 A No, sir.  
 22 Q Okay.  
 23 (Whereupon, video playing.)  
 24 Q All right. I'm going to ask you about --  
 25 All right. Now, I think Spurgeon is fixing

Page 333

1 to drive stun him, so I'm going to ask you to pay  
 2 attention to that, if I can.  
 3 A Okay.  
 4 Q Because that's my question. All right.  
 5 (Whereupon, video playing.)  
 6 Q All right. Now, did you witness him drive  
 7 stunning him that time?  
 8 A I did.  
 9 Q And did it appear to you that he was able to  
 10 drive stun him that time?  
 11 MR. WILLIAMS: Object to form.  
 12 MS. NGUYEN: Join.  
 13 THE WITNESS: It does. It looks like  
 14 Mr. McBrayer pulled away from him at some point.  
 15 BY MR. SPURLIN:  
 16 Q Okay. And you don't whether that was after  
 17 the full duration or on four and a half seconds or when  
 18 it was?  
 19 A It sounds like you can hear the beep right  
 20 there.  
 21 Q Okay.  
 22 A So it was still currently going.  
 23 (Whereupon, video playing.)  
 24 Q Do you know if this was the first or second  
 25 time he was drive stunned?

84 (Pages 330 to 333)

Page 334

1 A I don't know that.  
 2 (Whereupon, video playing.)  
 3 Q All right. I'm going to back that up for us  
 4 to see if we can tell how long he had the weapon stuck  
 5 to his body.  
 6 (Whereupon, video playing.)  
 7 Q Did you know that night that he had been  
 8 tased twice?  
 9 MR. WILLIAMS: Object to form.  
 10 THE WITNESS: I'm sorry?  
 11 BY MR. SPURLIN:  
 12 Q Did you know that night he had been drive  
 13 stunned two times by Spurgeon?  
 14 A No, sir, I didn't.  
 15 Q You didn't see that that night?  
 16 A I mean, yes. I assumed that I would have  
 17 seen it, yes.  
 18 Q Okay. So what I'm asking you is did you know  
 19 that night that he had been drive stunned twice by  
 20 Spurgeon?  
 21 A Yes.  
 22 Q Okay. Okay. All right.  
 23 A You said that you had question about the  
 24 duration.  
 25 MR. WILLIAMS: No.

Page 335

1 THE WITNESS: Okay. I'm sorry.  
 2 (Whereupon, video playing.)  
 3 BY MR. SPURLIN:  
 4 Q Could you tell how long he was -- could you  
 5 tell how long he had tased him before he rolled over  
 6 away from it in watching that?  
 7 MR. WILLIAMS: Object to form.  
 8 THE WITNESS: No, sir.  
 9 BY MR. SPURLIN:  
 10 Q Did it appear that he had it against his body  
 11 from 2:04 to 2:08 before he rolled over?  
 12 A No, sir.  
 13 MS. NGUYEN: Object to form.  
 14 BY MR. SPURLIN:  
 15 Q You couldn't see that?  
 16 A (Shaking head negatively.)  
 17 Q Okay. All right. I want you to watch this.  
 18 (Whereupon, video playing.)  
 19 Q Is everybody breathing heavily at that point?  
 20 A I can't speak for everybody.  
 21 Q You can't hear it?  
 22 A Well, I can't hear everybody breathing  
 23 individually, no.  
 24 Q Okay. There's just a couple I want to show  
 25 you so I'm going to try to --

Page 336

1 (Whereupon, video playing.)  
 2 Q That's not true? That's not why you pulled  
 3 his TASER, because he had white foam around his mouth,  
 4 correct?  
 5 A Correct.  
 6 Q That statement you made to the other officers  
 7 "I pulled my TASER because he had white foam around his  
 8 mouth" is not true?  
 9 A No, sir.  
 10 Q In fact, you had pulled your TASER for about  
 11 36 seconds before he got close enough for you to see  
 12 any white foam, true?  
 13 A Yes, sir.  
 14 Q Why did you tell the other officers that  
 15 then?  
 16 A Sir, with -- I mean, with everything  
 17 happening the way it did, that was just my account at  
 18 that point in time with everything happening as fast as  
 19 it did.  
 20 Q Okay.  
 21 (Whereupon, video playing.)  
 22 Q Is that true, "I'm the only one that  
 23 deployed"?  
 24 A That deployed, yes.  
 25 Q Okay.

Page 337

1 MS. NGUYEN: Object to form.  
 2 BY MR. SPURLIN:  
 3 Q Okay. What do you mean by "deployed"?  
 4 A That deployed my TASER cartridge.  
 5 Q Okay. So what you mean by that is that drive  
 6 stuns would not be included in what you're saying; is  
 7 that right?  
 8 A That is correct.  
 9 Q Okay.  
 10 A Because at that point, they're looking for  
 11 the pieces to my TASER cartridge.  
 12 Q Okay. I want you to listen to the  
 13 conversation with the EMS person.  
 14 A Yes, sir.  
 15 (Whereupon, video playing.)  
 16 Q Is that your voice saying "I didn't realize  
 17 he was unresponsive"?  
 18 A Yes, sir.  
 19 Q Was that true?  
 20 A Yes, sir. I mean, it depends on what you  
 21 define as unresponsive.  
 22 Q Well, you said he passed out?  
 23 A Right.  
 24 Q Passed out is unresponsive?  
 25 MS. NGUYEN: Object to form.

85 (Pages 334 to 337)

Page 338

1 MR. WILLIAMS: Object to form.  
 2 THE WITNESS: That's your definition of  
 3 unresponsive.  
 4 BY MR. SPURLIN:  
 5 Q Have you ever -- have you ever spoken to  
 6 anyone who's passed out?  
 7 MR. WILLIAMS: Object to form.  
 8 THE WITNESS: No, sir.  
 9 BY MR. SPURLIN:  
 10 Q Have you ever had anyone who's passed out  
 11 talk to you?  
 12 A No, sir.  
 13 Q Passed out means they're not aware, awake,  
 14 and verbalizing, correct?  
 15 A That is absolutely correct.  
 16 MR. SPURLIN: Object to form.  
 17 BY MR. SPURLIN:  
 18 Q You just told him that you didn't know he was  
 19 unresponsive. But you said he was limp and passed out  
 20 when he was carried to the car, correct?  
 21 A Right.  
 22 Q And he was limp and passed out when you  
 23 checked his vital signs, correct?  
 24 A Correct.  
 25 Q You couldn't see his chest rising or him

Page 339

1 breathing when he was in the car, right?  
 2 A Correct.  
 3 Q He was unresponsive in the car?  
 4 A No, sir.  
 5 Q He never responded to you when you checked  
 6 his corotid, did he?  
 7 A No, sir. However, when you talk about  
 8 responsiveness, you're talking about more than just  
 9 verbal. If he would have said verbally responsive,  
 10 then I would have said, yes, he was never verbally  
 11 responsive.  
 12 However, responsive can mean a number of  
 13 different things. Responsiveness could mean that he  
 14 responds to pain, things like that, you know. Maybe  
 15 they tried a sternum rub, maybe they didn't -- I don't  
 16 know -- and he was unresponsive to that. I can't  
 17 determine what they meant by unresponsive.  
 18 Q When he was lifted by his arms and put in the  
 19 car, did he respond?  
 20 MR. WILLIAMS: Object to form.  
 21 MS. NGUYEN: Join.  
 22 THE WITNESS: He did not say anything.  
 23 BY MR. SPURLIN:  
 24 Q Did he jerk away?  
 25 A No, sir.

Page 340

1 Q Did he respond as if he was in pain?  
 2 A No, sir.  
 3 Q Did he make any response, verbal or  
 4 otherwise?  
 5 A No, sir.  
 6 Q When you checked his corotid in the vehicle,  
 7 did he respond to you in any way whatsoever?  
 8 A I did not summons a response.  
 9 Q Did he verbalize a response?  
 10 A No, sir.  
 11 Q Did he jerk away when you touched his  
 12 corotid?  
 13 A No, sir.  
 14 Q Did he try to turn away from you?  
 15 A No, sir.  
 16 Q Did he grunt or groan in any way?  
 17 A No, sir.  
 18 Q So you still believe that your statement to  
 19 the EMS Cayton was true, "I didn't know he's un -- he  
 20 was unresponsive"?  
 21 A Yes, sir, I do.  
 22 Q Okay. Because you def -- your definition of  
 23 unresponsive includes what?  
 24 MR. WILLIAMS: Object to form.  
 25 THE WITNESS: What I -- what I think or what

Page 341

1 I assume he meant by unresponsive was -- was not  
 2 verbally. I thought he was speaking from a  
 3 medical standpoint. And I don't have any basis to  
 4 determine if he's unresponsive based on a medical  
 5 standpoint.  
 6 BY MR. SPURLIN:  
 7 Q Well, why did you respond that way then,  
 8 because you had no information to contradict what  
 9 Cayton said?  
 10 A No, sir. I stated I did not know he was  
 11 unresponsive, which is a true fact.  
 12 Q Okay. All right. Did you ever tell McBrayer  
 13 if you'll quit resisting, we'll let you up?  
 14 A No, sir.  
 15 Q Did you ever ask him if he was the one in the  
 16 car?  
 17 A No, sir.  
 18 Q Did you ever ask him if he was hurt in any  
 19 way?  
 20 A No, sir.  
 21 Q Did you ever ask him if he had used any drugs  
 22 that night?  
 23 A No, sir.  
 24 Q Okay. All right. I'm going to change videos  
 25 because it doesn't show up well on this one.

86 (Pages 338 to 341)

Page 342

1 (Whereupon, video playing.)  
 2 Q Do you see that lady's car in the roadway?  
 3 A I do.  
 4 Q In the right-hand lane?  
 5 A It appears to be, yes.  
 6 Q And she's talking to who?  
 7 A My assumption would be Deputy Spurgeon.  
 8 Q Well, you recognize his voice, don't you?  
 9 A Yes.  
 10 Q That's not an assumption, that's a fact,  
 11 right?  
 12 A Okay. Yes, she's talking to Deputy Spurgeon.  
 13 Q And you never saw her vehicle at all that  
 14 night?  
 15 A Not that I recall, no.  
 16 Q Okay. Did you have to go around Spurgeon's  
 17 car or her vehicle to go where you went?  
 18 A No, sir.  
 19 Q Do you know how far from where they were or  
 20 where you went around Spurgeon or where you left  
 21 Spurgeon it was until you heard the voice?  
 22 A No, sir.  
 23 Q Was it quickly?  
 24 A I don't remember.  
 25 Q Okay. Now, do you know if this is body cam

Page 343

1 footage from Spurgeon or --  
 2 A Yes, sir. It is body camera footage.  
 3 Q Okay. All right.  
 4 MR. WILLIAMS: It shows it on the thing  
 5 there.  
 6 (Whereupon, video playing.)  
 7 Q Did Spurgeon ever tell you that she thought  
 8 he was having a mental breakdown?  
 9 A No, sir.  
 10 Q Would that information have been helpful to  
 11 you?  
 12 A Yes, sir.  
 13 Q Would you have done anything differently when  
 14 you approached out there if you thought there was  
 15 someone out calling for help that had a mental  
 16 breakdown going on?  
 17 MS. NGUYEN: Object to form.  
 18 MR. WILLIAMS: Object to form.  
 19 THE WITNESS: No, sir, I don't. No, sir.  
 20 BY MR. SPURLIN:  
 21 Q Wouldn't it have been prudent to summon  
 22 mental health people?  
 23 MS. NGUYEN: Object to form.  
 24 THE WITNESS: Some of the mental health  
 25 people's not going to do anything because they're

Page 344

1 not going to come on scene until we control that  
 2 scene.  
 3 (Whereupon, video playing.)  
 4 BY MR. SPURLIN:  
 5 Q Okay. What I want you to look for is do you  
 6 ever apply any pressure to his body when he's down?  
 7 A Okay.  
 8 Q Do you at this point put your right knee on  
 9 his neck?  
 10 A No, sir. It's on his back at that point.  
 11 Q On his back. What part of his back?  
 12 A It's his upper part of his back, around the  
 13 shoulder blades.  
 14 Q His right shoulder blade, if he's facedown?  
 15 A I can't tell which shoulder blade it would  
 16 be. I don't know.  
 17 Q If he's facedown --  
 18 A Right.  
 19 Q -- his right side would be to you, his left  
 20 side would be to Spurgeon, correct?  
 21 A Yes, sir.  
 22 (Whereupon, video playing.)  
 23 Q Can you hear the heavy breathing?  
 24 A Yes, sir. I mean, that's us.  
 25 Q All of you?

Page 345

1 A Yes, sir.  
 2 (Whereupon, video playing.)  
 3 Q Is your knee still on his shoulder blade?  
 4 A It is.  
 5 Q Is his face in the dirt?  
 6 A His cheek is, yes.  
 7 Q Is that where Spurgeon told you to move, you  
 8 might restrict his breathing?  
 9 A Yes, sir.  
 10 Q Okay. And you did that?  
 11 A Yes, sir. And at that point, you can see  
 12 that my knee had slipped to his neck.  
 13 Q Okay. And to be fair, when he told you to  
 14 move the knee off that area, it had been there for a  
 15 minute or so, correct?  
 16 MR. WILLIAMS: Object to the form.  
 17 THE WITNESS: No, sir.  
 18 BY MR. SPURLIN:  
 19 Q How long had it been there?  
 20 A It was applied to the upper part of his back.  
 21 However, you can see in the video clearly I'm not  
 22 putting much pressure there. The majority of the  
 23 pressure -- the majority of my weight is on my other  
 24 knee.  
 25 Q Okay.

87 (Pages 342 to 345)

Page 346

1 (Whereupon, video playing.)  
 2 Q I may not have backed that up long enough.  
 3 What I'm asking is did Spurgeon tell them he  
 4 needs EMS for him or for McBrayer?  
 5 Could you hear that or was I talking over it?  
 6 A No, sir, I heard that.  
 7 Also, what I would like to note is we already  
 8 identified that the TASER was deployed, so EMS was  
 9 already prepared to handle that situation as well.  
 10 Q Was it your testimony that anytime a TASER is  
 11 deployed, the policy of the sheriff's department is  
 12 that the person get medical care and attention?  
 13 A Yes, sir.  
 14 Q Okay. Well, earlier I asked you that. I  
 15 said, did he need medical care and attention if he had  
 16 been in the dirt struggling for ten minutes, if he was  
 17 having a mental health episode, if had been tased six  
 18 times for a 30 second duration, if he was limp, and if  
 19 he was unconscious. And your answer was, no, I didn't  
 20 know of any reason he needed medical evaluation or  
 21 care?  
 22 MR. WILLIAMS: Object to form because you  
 23 strung all those things together --  
 24 BY MR. SPURLIN:  
 25 Q Is that -- is that what you said?

Page 348

1 A I don't know if he was there. Well, he was  
 2 there when we loaded him in the car, yes.  
 3 Q Okay. Now, let me ask you this question. Do  
 4 you understand in this case that Axon's position is  
 5 that they have clearly, thoroughly and completely  
 6 warned everybody who uses the TASER of all the risks,  
 7 training materials and instructions that should be  
 8 followed when using the TASER?  
 9 Do you understand that?  
 10 MS. NGUYEN: Object to form and foundation.  
 11 THE WITNESS: Well, I can't be clear on  
 12 Axon's position on anything.  
 13 BY MR. SPURLIN:  
 14 Q You don't have any understanding on that?  
 15 MS. NGUYEN: Same objections.  
 16 THE WITNESS: You asked -- you asked me if I  
 17 was clear on their position. I can't be clear on  
 18 Axon's position.  
 19 BY MR. SPURLIN:  
 20 Q Okay. But as we sit here, the night that you  
 21 deployed this, you had no understanding of what excited  
 22 delirium was, right?  
 23 MR. WILLIAMS: Object to form.  
 24 THE WITNESS: Correct. I didn't know enough  
 25 about excited delirium.

Page 347

1 MR. WILLIAMS: -- and I objected.  
 2 THE WITNESS: That is what I stated, yes,  
 3 sir.  
 4 BY MR. SPURLIN:  
 5 Q But now you're saying that anytime anybody's  
 6 tased, it's the policy that they get medical  
 7 evaluation, right?  
 8 A Yes, sir.  
 9 Q Okay. Bright-line rule, if anybody is tased  
 10 and they're not limp, they're not unconscious, they're  
 11 not having a mental health episode, they get care and  
 12 evaluation, right?  
 13 MR. WILLIAMS: Object to form.  
 14 THE WITNESS: Yes, sir.  
 15 BY MR. SPURLIN:  
 16 Q All right. How many officers were present  
 17 when he was loaded into the vehicle?  
 18 A I'm not sure, sir.  
 19 Q Wasn't it you, Spurgeon, Hancock, Calderon,  
 20 and the other guy that got down on his legs? I forgot  
 21 his name. What's his name? Do you remember?  
 22 A I believe it was -- was that Scott Parker?  
 23 Q Yes. Thank you. That was five, right?  
 24 A Yes, sir.  
 25 Q Henderson was there too, right, six?

Page 349

1 BY MR. SPURLIN:  
 2 Q Your testimony is that you targeted the chest  
 3 area, correct?  
 4 MR. WILLIAMS: Wait a minute. Wait a minute.  
 5 You're not going to go back and ask these  
 6 questions again.  
 7 MR. SPURLIN: If you don't hush, I might.  
 8 MR. WILLIAMS: He has asked and answered that  
 9 numerous times. I'm going to call off the  
 10 deposition.  
 11 MR. SPURLIN: If you want to.  
 12 MR. WILLIAMS: I don't think the Judge is  
 13 going allow you to continue. If we were in the  
 14 courtroom, he would, counselor, move on. You've  
 15 asked that and he's already testified numerous  
 16 times. And now you're wanting to go back and --  
 17 MR. SPURLIN: No, I'm not.  
 18 MR. WILLIAMS: -- review what he testified  
 19 to, no. No.  
 20 MR. SPURLIN: I'm trying to find out was he  
 21 adequately warned.  
 22 MR. WILLIAMS: Don't ask the same questions.  
 23 You can ask that question and he already answered  
 24 it before you --  
 25 MR. SPURLIN: Are you instructing him not to

88 (Pages 346 to 349)



Page 350

1 answer that question?  
 2 MR. WILLIAMS: The same questions you've  
 3 asked about ten times, yes.  
 4 MR. SPURLIN: All right. That question?  
 5 MR. WILLIAMS: No. You've already -- no,  
 6 the --  
 7 BY MR. SPURLIN:  
 8 Q Did you target his chest area that night?  
 9 MR. WILLIAMS: He's already answer --  
 10 answered that question.  
 11 MR. SPURLIN: You're instructing him not to  
 12 answer?  
 13 MR. WILLIAMS: Yes.  
 14 BY MR. SPURLIN:  
 15 Q Had you ever been trained that you should not  
 16 target the chest area --  
 17 MR. WILLIAMS: He's already answered that  
 18 question multiple times, and we've gone over the  
 19 policies and the warnings. Come on, man.  
 20 BY MR. SPURLIN:  
 21 Q -- by Major Torres?  
 22 MR. WILLIAMS: You've already asked him those  
 23 questions.  
 24 BY MR. SPURLIN:  
 25 Q Yes or no?

Page 352

1 Q Did he respond to that as if it was painful  
 2 by rolling away from it?  
 3 MS. NGUYEN: Object to form.  
 4 THE WITNESS: It appears as if he did.  
 5 BY MR. SPURLIN:  
 6 Q Okay. So based on your observations of the  
 7 scene, you do think current went into him through the  
 8 drive stun?  
 9 A Yes, sir.  
 10 Q Okay. Is it your testimony that you targeted  
 11 the chest or that happened to be where he got shot?  
 12 MR. WILLIAMS: Object to form.  
 13 MS. NGUYEN: Object to form.  
 14 THE WITNESS: I don't think that I would  
 15 deliberately target the chest. I mean, in that  
 16 situation, I really didn't have any other choice  
 17 or any other option as far as a target area.  
 18 BY MR. SPURLIN:  
 19 Q Okay. So because you had no other choice,  
 20 you aimed for his chest?  
 21 A No, sir, I didn't. I didn't have time to aim  
 22 for anything.  
 23 Q Your testimony today is you did not aim at  
 24 all?  
 25 A I didn't have time to aim. If you look at

Page 351

1 MS. NGUYEN: Object to form.  
 2 THE WITNESS: I was advised -- I was advised  
 3 that it is not ideal to target the chest area.  
 4 However, it's going to be -- the situation is  
 5 going to dictate it. So it is not ideal to target  
 6 the chest area, no.  
 7 BY MR. SPURLIN:  
 8 Q All right. I'm going to ask you a question  
 9 about Exhibit 1, I believe it is.  
 10 Did you prepare this report that night?  
 11 A It would -- no, sir. It would have been the  
 12 day -- that day.  
 13 Q Okay. Like this happened early in the  
 14 morning, and you prepared it that same day?  
 15 A Correct.  
 16 Q Okay. At some point later in that day,  
 17 correct?  
 18 A Correct.  
 19 Q Okay. Had you ever received any training  
 20 from Torres or anyone else that drive stun should not  
 21 be repeated more than once?  
 22 A No, sir.  
 23 Q Did the drive stun ever appear to have any  
 24 effect on him for compliance or control?  
 25 A No, sir.

Page 353

1 the proximity, I really --  
 2 Q I just want to be clear. You did not aim?  
 3 You just --  
 4 A No, sir.  
 5 Q -- turned and shot?  
 6 A I mean, I --  
 7 MS. NGUYEN: Object to form.  
 8 THE WITNESS: Yeah.  
 9 MR. WILLIAMS: Object to form.  
 10 THE WITNESS: To some degree, yes, I aimed.  
 11 Was I deliberately aiming for his chest, not  
 12 specifically.  
 13 BY MR. SPURLIN:  
 14 Q Okay. And, again, I'm going to remind you of  
 15 what you said and make sure I understand.  
 16 MR. WILLIAMS: We've already actually gone  
 17 through this one time.  
 18 MR. SPURLIN: No. No. No.  
 19 MR. WILLIAMS: You did the same thing. You  
 20 pulled it out and asked him about it.  
 21 MR. SPURLIN: He has now changed his story to  
 22 say I didn't have time to aim.  
 23 MR. WILLIAMS: Go ahead.  
 24 MR. SPURLIN: I'm going to get this part  
 25 clear and then we're going to end.

89 (Pages 350 to 353)

Page 354

1 MR. WILLIAMS: Go ahead.  
 2 BY MR. SPURLIN:  
 3 Q Your statement was my intention was, yes, for  
 4 one of the prongs to go toward the chest area.  
 5 Ideally, I would want one toward the chest area and one  
 6 lower on the stomach area.  
 7 A Okay.  
 8 Q That's what you told Mr. Webster.  
 9 A Okay.  
 10 Q Now, after all of this you're repeating it,  
 11 your answer has been in the last hour, I didn't have  
 12 time, he was running toward me?  
 13 A No, sir. That -- that doesn't specifically  
 14 state anything about aiming. I'm telling you that I  
 15 did not have time to aim at a specific target area.  
 16 Q Okay.  
 17 A However, with the position that he was  
 18 running at me, the chest area is all I had available.  
 19 Q I understand in exigent circumstances you may  
 20 have to aim quickly.  
 21 A Yes, sir.  
 22 Q But you said my intention -- my intention,  
 23 not accidentally, not because of lack of time -- my  
 24 intention was for one of the prongs to go towards the  
 25 chest area.

Page 356

1 weren't 10 feet away, you said you were 10 feet away  
 2 when you deployed, correct?  
 3 MR. WILLIAMS: Object to form.  
 4 MS. NGUYEN: Join.  
 5 MR. WILLIAMS: It's an approximation --  
 6 BY MR. SPURLIN:  
 7 Q Isn't that what you said?  
 8 MR. WILLIAMS: -- with his prior testimony.  
 9 And you're going back again to prior testimony.  
 10 MR. SPURLIN: I am because he keeps changing.  
 11 THE WITNESS: I stated that I was  
 12 approximately. Again, I don't know exactly how  
 13 far I was away.  
 14 BY MR. SPURLIN:  
 15 Q Okay. And after you gave that testimony, she  
 16 then tried to get you to say you had your arms out  
 17 extended and how many feet is it from the end of your  
 18 hand to your chest.  
 19 Do you remember that question?  
 20 MS. NGUYEN: Object to the form.  
 21 THE WITNESS: That is the answer I answered.  
 22 MS. NGUYEN: I did not try to get him to say  
 23 anything.  
 24 BY MR. SPURLIN:  
 25 Q And you said 3 to 3 and a half feet from your

Page 355

1 Is that not aiming?  
 2 A No, sir.  
 3 Q Okay.  
 4 A When you say "aiming," you -- you indicate  
 5 that I am looking down that TASER and I am -- and I am  
 6 deliberately shooting for a specific area, okay.  
 7 What I'm telling you is Mr. McBrayer was  
 8 running at me, okay. He was in a crouched position as  
 9 if you would be if you were sprinting towards somebody,  
 10 okay, meaning leaving the only area that I have being  
 11 in that chest area.  
 12 Q Okay. So are you saying because it was the  
 13 only area I had, I intended to shoot him in the chest?  
 14 Is that what you're saying?  
 15 MR. WILLIAMS: Chest area.  
 16 THE WITNESS: Chest area, yes.  
 17 BY MR. SPURLIN:  
 18 Q Okay. So you told Ms. Nguyen that you in  
 19 fact were in a position with your arms extended to  
 20 shoot him, right?  
 21 A No, sir. She asked me to demonstrate what  
 22 the position should be.  
 23 Q Were you in that position that night?  
 24 A I clearly was not.  
 25 Q Okay. So when she was trying to say you

Page 357

1 chest to your hand, right?  
 2 MR. WILLIAMS: Object to form.  
 3 THE WITNESS: Yes, sir.  
 4 MR. WILLIAMS: Actually, I think he said 3 to  
 5 4 feet --  
 6 THE WITNESS: I never --  
 7 MR. WILLIAMS: -- which is probably a little  
 8 long.  
 9 MR. SPURLIN: Way long.  
 10 MR. WILLIAMS: Object.  
 11 THE WITNESS: I never indicated --  
 12 MR. WILLIAMS: So it's possibly --  
 13 THE WITNESS: I never indicated that that's  
 14 where I deployed that TASER from.  
 15 BY MR. SPURLIN:  
 16 Q Okay. Well, were your arms extended or not  
 17 when you deployed the TASER?  
 18 A You would have to look at the video.  
 19 Q You don't know?  
 20 A I don't recall.  
 21 Q Okay. So a minute ago when you told me you  
 22 were not in that position with your arms extended -- do  
 23 you remember that or not remember that?  
 24 A Clearly I wasn't in that position.  
 25 Q Okay. So do you remember Ms. Nguyen then

90 (Pages 354 to 357)

Page 358

1 saying you were within 7 feet then and that's not ideal  
 2 for deployment? Do you remember that?  
 3 A Yes, sir.  
 4 MS. NGUYEN: Object to the form.  
 5 BY MR. SPURLIN:  
 6 Q It's not your testimony that you deployed  
 7 from 7 feet away, is it?  
 8 MS. NGUYEN: Object to form.  
 9 MR. WILLIAMS: Object to form.  
 10 THE WITNESS: Sir, my testimony is I don't  
 11 know how far I was away.  
 12 BY MR. SPURLIN:  
 13 Q And when you were asked by Ms. Nguyen, you  
 14 said 10 feet. That was your best estimate, correct?  
 15 A That is an estimate.  
 16 Q Do you know if your hands were extended in  
 17 front of your chest?  
 18 A I believe they were, but not --  
 19 Q How far?  
 20 A I mean, you can get a tape measure and  
 21 measure it, if you like.  
 22 Q Can you show me?  
 23 A No, I can't.  
 24 Q They were not fully extended?  
 25 A I don't know.

Page 360

1 BY MS. NGUYEN:  
 2 Q Okay. You were asked a lot of questions by  
 3 Mr. Spurlin about why you activated your TASER, why you  
 4 activate it -- activated it at the time that you did.  
 5 Do you remember that line of questioning?  
 6 A I do.  
 7 Q By activating the TASER or taking the safety  
 8 off, doesn't it also turn on the central information  
 9 display, that little screen on the front of the TASER?  
 10 A It does.  
 11 MR. SPURLIN: Object to the form.  
 12 BY MS. NGUYEN:  
 13 Q Did you learn about that screen in your TASER  
 14 training?  
 15 A Yes, I did.  
 16 Q And that screen will actually tell you  
 17 whether there's any faults with your -- your device,  
 18 correct?  
 19 A Yes, it will.  
 20 MR. SPURLIN: Object to the form.  
 21 BY MS. NGUYEN:  
 22 Q And doesn't your training entail and include  
 23 that you should activate your device when you pull it  
 24 out so that way you know if there's a fault before you  
 25 actually have to deploy it?

Page 359

1 Q You don't know if they were half extended?  
 2 A I don't know.  
 3 Q Okay. Thank you, sir.  
 4 A Yes, sir. Thank you.  
 5 MS. NGUYEN: Do you have anything?  
 6 MR. WILLIAMS: No.  
 7 MS. NGUYEN: I hate to do this.  
 8 MR. WILLIAMS: And I hope you don't.  
 9 MS. NGUYEN: I do, but it's going to be  
 10 quick.  
 11 MR. WILLIAMS: All right.  
 12 MS. NGUYEN: Just a couple of things.  
 13 FURTHER EXAMINATION  
 14 BY MS. NGUYEN:  
 15 Q And, Deputy, I know that you've had a very  
 16 long day, and I appreciate you hanging in there.  
 17 A Yes, ma'am.  
 18 Q I only just want to -- have a couple of  
 19 things. But this is the last time that I'll get to  
 20 speak with you so I just need to cover these real  
 21 quick.  
 22 THE VIDEOGRAPHER: Can you put your mic on,  
 23 please.  
 24 MS. NGUYEN: Oh, sure.  
 25 MR. SPURLIN: You can have mine.

Page 361

1 MR. SPURLIN: Object to the form.  
 2 THE WITNESS: I don't recall.  
 3 BY MS. NGUYEN:  
 4 Q By activating the device, you can see if  
 5 there is --  
 6 A Yes.  
 7 Q -- a fault error on your device, right?  
 8 A Yes, ma'am.  
 9 MR. SPURLIN: Object to the form. He ain't  
 10 testified to anything.  
 11 BY MS. NGUYEN:  
 12 Q And it can also tell you whether there's  
 13 actually a cartridge in your device, right?  
 14 MR. SPURLIN: Object to the form.  
 15 THE WITNESS: Yes.  
 16 BY MS. NGUYEN:  
 17 Q So by activating, you testified it activates  
 18 the flashlight, it activates the laser and it also  
 19 activates the CID screen?  
 20 MR. SPURLIN: Object to the form. That's  
 21 your testimony, not his.  
 22 MS. NGUYEN: You can -- I do not want your  
 23 speaking objections. You can object to the  
 24 form --  
 25 MR. SPURLIN: I'm making what I want.

91 (Pages 358 to 361)

Page 362

1 MS. NGUYEN: -- and that's it. And that's  
 2 all that's permitted under the rules.  
 3 MR. SPURLIN: You sitting here objecting and  
 4 he says he doesn't remember anything about his  
 5 training until you start questioning him.  
 6 MS. NGUYEN: That's your -- that's your  
 7 opinion.  
 8 MR. SPURLIN: Okay.  
 9 MS. NGUYEN: Keep your objections to what  
 10 we've already agreed to and what's permitted under  
 11 the rules.  
 12 BY MS. NGUYEN:  
 13 Q Okay. Drive stuns. Based upon your  
 14 training, do drive stuns work if only one probe is  
 15 touching the skin?  
 16 A No, ma'am.  
 17 Q What is required for a drive stun to even  
 18 have the potential of having pain compliance?  
 19 A Both probes have to be connected to the skin.  
 20 Q And if one probe disconnects?  
 21 A Then it doesn't have any effect.  
 22 Q Doesn't activate?  
 23 A No, ma'am.  
 24 Q In listening to the video, did you hear the  
 25 -- you started to testify, but I think you were cut off

Page 364

1 A Yea. Oh, page two, yes.  
 2 Q Do you remember --  
 3 MR. SPURLIN: Let me make -- let me make an  
 4 objection for the record. When I questioned him  
 5 about Exhibit 8, you all screamed and hollered at  
 6 me and said it's already been established that he  
 7 wasn't trained with eight, he was trained with  
 8 nine. And now you want to use the one that you  
 9 and Mr. Williams said he wasn't trained with.  
 10 MR. WILLIAMS: I didn't say he wasn't trained  
 11 with it.  
 12 MR. SPURLIN: So at least let's be fair.  
 13 MR. WILLIAMS: I just said --  
 14 MS. NGUYEN: Oh, my gosh.  
 15 MR. WILLIAMS: I just said this is the one  
 16 that we produced. I didn't know which one he was.  
 17 MR. SPURLIN: No. No.  
 18 MR. WILLIAMS: So I just wanted you to know  
 19 that that's --  
 20 MR. SPURLIN: You all told me not to question  
 21 him with eight, to use nine.  
 22 MR. WILLIAMS: No, I didn't.  
 23 MS. NGUYEN: No, we didn't.  
 24 MR. SPURLIN: Yes, you did.  
 25 MR. WILLIAMS: I just said the one that we

Page 363

1 by Mr. Spurlin.  
 2 But did you hear the beeping sound toward the  
 3 end of the cycle?  
 4 A I didn't.  
 5 Q What does that beeping sound mean?  
 6 A That indicates that you're coming to the end  
 7 of that cycle.  
 8 Q And does that beeping sound -- do you know  
 9 when it starts at the end of the cycle?  
 10 A I don't remember it.  
 11 Q Okay. That's fine.  
 12 But it will start beeping when you get to the  
 13 end of the cycle, right?  
 14 MR. SPURLIN: Object to the form.  
 15 THE WITNESS: Correct.  
 16 BY MS. NGUYEN:  
 17 Q Now, the warnings -- do you have Exhibit 8 in  
 18 front of you?  
 19 A I do.  
 20 Q Page two, that second paragraph where it  
 21 talks about "Some individuals may be particularly  
 22 susceptible."  
 23 Do you see that?  
 24 A You said the second paragraph?  
 25 Q Correct, of page two.

Page 365

1 produced is this one --  
 2 MS. NGUYEN: No, we didn't.  
 3 MR. WILLIAMS: -- so I don't know which one  
 4 he was trained on. That's what he said. I didn't  
 5 say that.  
 6 Why are you misrepresenting what we even say?  
 7 MR. SPURLIN: Oh, I remember what you said.  
 8 MR. WILLIAMS: Is that your MO? I mean,  
 9 that's what I've heard about you. And you seem to  
 10 have --  
 11 MR. SPURLIN: Oh, you've heard?  
 12 MR. WILLIAMS: You seem to have demonstrated  
 13 that.  
 14 MR. SPURLIN: Okay. Who told you?  
 15 MR. WILLIAMS: I don't know who --  
 16 MR. SPURLIN: You don't know? You're going  
 17 to make it up.  
 18 MR. WILLIAMS: I don't know who hadn't told  
 19 me.  
 20 MS. NGUYEN: All right.  
 21 MR. WILLIAMS: I don't know who hadn't told  
 22 me, but, you know.  
 23 MS. NGUYEN: For the sake of saving time.  
 24 MR. WILLIAMS: I'm trying to make sure that  
 25 the record is clear of what we produced and what

92 (Pages 362 to 365)

Page 366

1 the possible issue might be. Now you're  
 2 representing that we said something else, and  
 3 that's completely improper.  
 4 MR. SPURLIN: I know what you said.  
 5 MS. NGUYEN: All right. For the record --  
 6 MR. SPURLIN: Do you not remember --  
 7 MR. WILLIAMS: We'll look at the record.  
 8 MR. SPURLIN: -- when you look back at  
 9 Spurgeon's exhibit that I used, that you pulled  
 10 through it and said, yeah, see, there's the --  
 11 it's the -- it's the March one. You said that.  
 12 MR. WILLIAMS: That's what I said.  
 13 MR. SPURLIN: Yes.  
 14 MR. WILLIAMS: I said this is the one that we  
 15 produced.  
 16 MR. SPURLIN: No.  
 17 MR. WILLIAMS: I never said this is not the  
 18 one that he was trained on.  
 19 MR. SPURLIN: Go ahead.  
 20 MS. NGUYEN: Okay. For the record, he  
 21 testified he doesn't know which one he's trained  
 22 on. For the record, I'm asking him about a  
 23 paragraph he's already testified, and we've all  
 24 acknowledged is the exact same --  
 25 MR. WILLIAMS: Same thing.

Page 367

1 MS. NGUYEN: -- in both Exhibit 8 and 9. So  
 2 it doesn't matter which exhibit I question him on.  
 3 BY MS. NGUYEN:  
 4 Q So going back to Exhibit 8, page two,  
 5 paragraph two.  
 6 A Yes, ma'am.  
 7 Q Deputy Tripp, you've already stated that that  
 8 paragraph is that exact same paragraph in Exhibit 9,  
 9 right?  
 10 A Correct.  
 11 Q Okay. So Mr. Spurlin asked you some  
 12 questions about this and whether this prohibited you  
 13 from using a TASER device on any of these individuals  
 14 known to be susceptible.  
 15 Do you recall that line of questioning?  
 16 MR. SPURLIN: Object to the form.  
 17 THE WITNESS: I do.  
 18 MR. SPURLIN: That wasn't the question asked.  
 19 BY MS. NGUYEN:  
 20 Q Okay. Now, we've already identified and  
 21 you've already testified today that you did not know  
 22 any of Mr. McBrayer's medical conditions, you didn't  
 23 have an opportunity to learn more, correct?  
 24 MR. SPURLIN: Object to the form.  
 25 THE WITNESS: That is correct.

Page 368

1 BY MS. NGUYEN:  
 2 Q Okay. So even assuming you did, is there  
 3 anything in this paragraph that prohibits you from  
 4 deploying a TASER CEW on an individual that is  
 5 attacking you?  
 6 MR. SPURLIN: Object to the form.  
 7 THE WITNESS: No, there's not.  
 8 BY MS. NGUYEN:  
 9 Q The white foam on the mouth, the first time  
 10 that you noticed that was as he was attacking you and  
 11 running at you, correct?  
 12 MR. SPURLIN: Object to the form.  
 13 THE WITNESS: Correct.  
 14 BY MR. SPURLIN:  
 15 Q So right before a second, maybe two seconds  
 16 before you deployed your TASER CEW?  
 17 MR. SPURLIN: Object to the form.  
 18 THE WITNESS: Yes, ma'am.  
 19 MS. NGUYEN: That's all I have, Deputy Tripp.  
 20 I appreciate your time today.  
 21 MR. WILLIAMS: I do actually. I thought of  
 22 one thing I just wanted to make clear for the  
 23 record.  
 24 EXAMINATION  
 25 BY MR. WILLIAMS:

Page 369

1 Q Deputy Tripp, earlier when Mr. Spurlin was  
 2 playing Spurgeon's body cam, did you hear him dispatch  
 3 71 or sound the radio 71 dispatch TASER deploy?  
 4 A That was me.  
 5 Q Oh, that was you?  
 6 A Yes.  
 7 Q Okay. Well, I heard it on his --  
 8 A Yeah, I'm Tip 71.  
 9 Q Okay. And what does that mean to dispatch?  
 10 A Any time that I deploy a TASER, it identifies  
 11 that they need to have EMS en route to our location to  
 12 check that patient.  
 13 Q Okay. All right.  
 14 MR. WILLIAMS: No further questions. Thanks.  
 15 THE VIDEOGRAPHER: Okay. Do we close the  
 16 session?  
 17 MS. NGUYEN: Yes.  
 18 THE VIDEOGRAPHER: All right. Stand by,  
 19 please.  
 20 This concludes the deposition of Deputy  
 21 Anthony Tripp, consisting of five mediums. The  
 22 time is 6:13 we're going off the record.  
 23 (Whereupon, video record was concluded.)  
 24 THE COURT REPORTER: I just have to get any  
 25 transcript orders on the record.

93 (Pages 366 to 369)



Page 370

1 Are you ordering?  
 2 MS. NGUYEN: Yeah, we do the bundle.  
 3 THE COURT REPORTER: Oh, you have a standing  
 4 order?  
 5 MS. NGUYEN: Yes.  
 6 THE COURT REPORTER: Mr. Spurlin, you already  
 7 told me what you wanted, a condensed emailed.  
 8 MR. SPURLIN: Yes.  
 9 THE COURT REPORTER: Mr. Williams, do you  
 10 need a copy?  
 11 MR. WILLIAMS: Yes, of course. And I'll have  
 12 the errata sheet for reading.  
 13 THE COURT REPORTER: Do you prefer  
 14 electronic?  
 15 MR. WILLIAMS: Yes, you can send it  
 16 electronic. I still like to get the condensed and  
 17 the full sized.  
 18 THE COURT REPORTER: Okay.  
 19 MR. WILLIAMS: I do not need the video.  
 20 THE COURT REPORTER: Okay. Thank you all.  
 21 (Whereupon, the deposition was concluded at  
 22 6:20 p.m. and signature was reserved.)  
 23  
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Page 371

## DISCLOSURE

1 STATE OF GEORGIA:  
 2 COUNTY OF TIFT:  
 3  
 4

5 Pursuant to Article 10.B. of the Rules and  
 6 Regulations of the Board of Court Reporting of the  
 7 Judicial Council of Georgia, I make the following  
 8 disclosure:  
 9

10 I am a Georgia Certified Court Reporter  
 11 reporting for Magna Legal Services, Seven Penn Center,  
 12 8th Floor, Philadelphia, Pennsylvania 19103,  
 13 866-624-6221.  
 14

15 Magna Legal Services is not disqualified from  
 16 a relationship of interest under the provisions of  
 17 O.C.G.A. 9-11-28(c).  
 18

19 Magna Legal Services was contacted by the  
 20 offices of Axon Enterprise, Inc. to provide court  
 21 reporting services for this deposition.  
 22

23 Magna Legal Services will not be taking this  
 24 deposition under any contract that is prohibited by  
 25 O.C.G.A. 15-14-37 (a) and (b).  
 26

27 Magna Legal Services has no exclusive  
 28 contract to provide reporting services with any party  
 29 to the case, any counsel in the case, or any reporter  
 30 or reporting agency from whom a referral might have  
 31 been made to cover this deposition.  
 32

33 Magna Legal Services will charge its usual  
 34 and customary rates to all parties in the case, and a  
 35 financial discount will not be given to any party to  
 36 this litigation.  
 37

38 A review of the transcript was requested.  
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Michelle Subia, RPR, CCR  
 Certificate No. 5817-0834-4721-4080

Page 372

1 CERTIFICATE  
 2 STATE OF GEORGIA:  
 3 COUNTY OF TIFT:  
 4  
 5 I, Michelle Subia, Certified Court Reporter,  
 6 State of Georgia, Certificate No. Certificate No.  
 7 5817-0834-4721-4080, CERTIFY that, acting in such  
 8 capacity, I reported the testimony herein and, on the  
 9 foregoing pages, have transcribed a true and correct  
 10 transcript thereof. A review of the transcript was  
 11 requested.  
 12 I FURTHER CERTIFY that I am not counsel for,  
 13 nor am I related to any party to the above case, nor am  
 14 I interested in the event or outcome.  
 15 WITNESS my hand and official seal as  
 16 Certified Court Reporter, State of Georgia, this 5th  
 17 day of October, 2021.  
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Michelle Subia, RPR, CCR  
 Certificate No. 5817-0834-4721-4080

Page 373

## E R R A T A P A G E

IN RE: McBrayer vs. Scarbrough, et al.

I, ANTHONY R. TRIPP, JR., the witness herein, have  
 read the transcript of my testimony and  
 the same is true and correct, to the best  
 of my knowledge, with the exception of the  
 following changes noted below, if any:

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94 (Pages 370 to 373)

Page 374

## ERRATA PAGE (Continued)

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21 \_\_\_\_\_  
 22 ANTHONY R. TRIPP, JR.

23 Sworn to and subscribed before me,  
 24 this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

25 \_\_\_\_\_  
 Notary Public  
 My commission expires:

95 (Page 374)

<b>A</b>				
<b>a.m</b> 2:6 61:8 249:24 250:7	<b>accomplish</b> 185:22	361:19	<b>affirmed</b> 146:9	115:3 167:5
<b>Aaron</b> 1:4,6,6,9 5:5	<b>account</b> 336:17	<b>activating</b> 42:12	<b>age</b> 161:19	170:14 192:11
<b>ability</b> 65:6,9,13,15 110:17 143:13	<b>accuracy</b> 100:5	360:7 361:4,17	<b>agencies</b> 13:18	211:6 240:2
236:24 237:7	<b>accurate</b> 20:10	<b>active</b> 76:24,24	15:19 97:11 120:2	261:22 290:22
<b>able</b> 23:9 24:7	38:4,10 42:6 54:7	77:8	259:20	293:18 317:4
35:17 41:8,8	57:7,17 66:14	<b>actively</b> 50:17,18	<b>agency</b> 85:24 86:5	353:23 354:1
43:20 48:10 54:16	67:12 79:2 100:18	60:16 72:9 75:1	371:17	366:19
55:3,13 56:9	103:5 124:17	178:17,20,22,25	<b>agents</b> 166:5	<b>aim</b> 133:3 134:23
62:22,23 69:11,13	<b>accurately</b> 126:4	305:7	<b>aggressive</b> 38:12	135:1,5 136:3,17
69:21 70:20,23,25	172:4 215:23	<b>activities</b> 77:1	76:24,24 77:8	136:20,23 212:15
71:4,8 72:23,23	216:23 217:6	307:10	208:4 291:9	217:14 352:21,23
73:9 74:3,6,8,22	219:19 244:2	<b>activity</b> 249:12	<b>agitated</b> 38:3,15,16	352:25 353:2,22
75:3,4,12,15	250:16	<b>actual</b> 199:14	38:25 40:4 49:9	354:15,20
108:12 109:10	<b>accusing</b> 99:12	<b>added</b> 123:16	104:10 239:25	<b>aimed</b> 205:18
111:25 117:25	<b>accustomed</b> 13:10	<b>additional</b> 15:22	240:4 291:6,7	206:16 207:16
123:2 137:9 138:7	<b>achieve</b> 87:8 88:20	16:1 21:1,6 55:8	<b>agitation</b> 102:5	352:20 353:10
189:21 209:6	220:7	137:10	104:6 238:20	<b>aiming</b> 135:12,24
225:12 285:2	<b>acknowledge</b> 82:22	<b>address</b> 5:13 22:4,5	<b>ago</b> 118:10 138:11	137:6 220:6
287:25 295:20	224:7	22:19 23:18 24:23	151:7 152:2,17	225:25 226:14
297:8 333:9	<b>acknowledged</b>	<b>adequately</b> 349:21	357:21	353:11 354:14
<b>abnormal</b> 324:20	228:12,25 366:24	<b>administration</b>	<b>agree</b> 50:7,12 66:3	355:1,4
<b>abraded/eroded</b>	<b>acknowledging</b>	17:15	76:11 83:12 84:1	<b>ain't</b> 361:9
90:2,16	290:17	<b>Administratix</b> 1:3	84:5,18 85:12,23	<b>air</b> 49:16 328:10
<b>abrasions</b> 331:8,19	<b>Acknowledgment</b>	<b>Administratrix</b> 5:5	85:23 86:7 90:25	<b>al</b> 5:6,9 373:2
<b>absolute</b> 317:15	82:20	<b>adopt</b> 143:20	91:17 94:20,23	<b>alert</b> 37:21 297:10
<b>absolutely</b> 46:6	<b>acronym</b> 168:1	<b>adopted</b> 141:2	95:8 96:1 107:20	<b>alerted</b> 126:9,10
61:5 146:21	<b>act</b> 62:8 262:3,7	142:23 144:23	117:5,22,24 120:3	<b>alerts</b> 113:15
188:25 240:12	<b>acting</b> 36:2 39:23	<b>adrenaline</b> 93:17	120:14,23 137:3	<b>aliases</b> 7:13
242:20 287:11	209:12 210:4,20	107:16 244:1	142:22 173:2,24	<b>all's</b> 172:7
338:15	260:6,11,15,19	<b>advanced</b> 61:16,19	176:4,22,24 177:3	<b>allegation</b> 9:6
<b>abuse</b> 102:6 106:3	261:5,14 265:3,5	<b>advancing</b> 107:1	181:4 186:23	<b>allow</b> 158:1 200:22
<b>academy</b> 11:19,20	266:8,11 289:10	213:15 215:2	187:14,21 188:11	201:2,22 232:13
11:21 12:12,17,19	302:20,22 372:7	<b>adverse</b> 43:21,23	188:12,21 190:5	349:13
162:6 167:14	<b>action</b> 1:9 211:23	43:25	190:11 191:7	<b>allowed</b> 202:24
176:14 177:1	<b>actions</b> 48:13	<b>advice</b> 266:7	192:20 235:16,21	<b>altercation</b> 110:4
274:8	108:13	<b>advised</b> 351:2,2	245:13 270:24	325:12,17
<b>accident</b> 24:14	<b>activate</b> 41:13,14	<b>aerial</b> 4:16,17,17	271:3 273:8,12	<b>Altman</b> 3:18 5:16
251:23 252:1,5,8	72:20 130:18,22	4:18,18 22:15	279:19 291:25	<b>AMA</b> 233:2
252:9,12,13,15	131:21 360:4,23	23:5,10	301:8 316:10	<b>ambiguous</b> 261:8
331:16	362:22	<b>affect</b> 108:17	327:17,18	<b>amended</b> 169:14
<b>accidentally</b> 273:1	<b>activated</b> 41:18,19	174:19 227:1	<b>agreed</b> 143:7	<b>American</b> 103:11
354:23	42:3,10 129:21	<b>affirm</b> 6:9	362:10	103:13
	130:5,11,13,21	<b>affirmatively</b> 9:15	<b>Agreement</b> 157:6	<b>amount</b> 70:18 92:7
	131:3,7,9,11,24	113:19 134:1	<b>ahead</b> 8:22 29:3	182:5 305:10,22
	136:15 360:3,4	162:9 186:14	45:4,8 47:19	<b>Amy</b> 3:10 5:22 7:18
	<b>activates</b> 361:17,18	295:6	59:25 63:5 81:8	61:3

<b>amyinguyen@axo...</b> 3:12	<b>anymore</b> 115:5	178:5,9 179:19	216:22 217:3,3,15	339:18 355:19
<b>and/or</b> 101:20	<b>anyone's</b> 274:12	180:6,14 181:9	217:16,22 218:19	356:16 357:16,22
102:6	<b>anytime</b> 346:10	260:11 304:1	219:5,15,16,25	<b>Army</b> 17:24
<b>ANGIE</b> 1:7	347:5	344:6	220:13 222:2,4,14	<b>arrest</b> 58:6 60:24
<b>angled</b> 33:1	<b>anyway</b> 209:1	<b>applying</b> 70:18	222:17 226:18,21	63:12 171:16
<b>angry</b> 38:6 48:11	<b>apart</b> 88:20 240:15	180:22 212:7	226:23 227:1	172:7 195:6
49:9 290:8,9	<b>apologize</b> 57:15	<b>appointed</b> 1:3 5:4	249:22,24 256:2	208:24 209:3,4,6
<b>annotated</b> 115:23	<b>apparently</b> 27:2	<b>appreciate</b> 119:9	273:6 345:14	249:5 277:7,9,12
<b>annual</b> 198:4	202:6	143:11 260:3	349:3 350:8,16	<b>arrest-related</b>
<b>answer</b> 8:12,15,22	<b>appear</b> 70:13 100:2	359:16 368:20	351:3,6 352:17	94:14
14:10 68:15	198:17 230:11	<b>apprehend</b> 298:4	354:4,5,6,15,18	<b>arrested</b> 160:17
100:18 125:11,12	247:20,22 303:18	<b>apprehending</b>	354:25 355:6,10	<b>arrived</b> 21:6 22:1,7
179:2 185:2	310:10 312:2	171:2	355:11,13,15,16	23:6 25:19 47:17
189:22 203:17	333:9 335:10	<b>approached</b> 26:8	<b>areas</b> 212:25 213:3	63:10 69:3,12
204:8,25 215:14	351:23	58:8 124:12 249:1	213:9 218:23,24	74:7,16 190:10
216:21 217:1	<b>appearances</b> 3:1	253:7 343:14	218:24,24 219:9	270:15 298:8
233:9 238:4 248:3	5:20	<b>appropriate</b> 45:13	219:13,14 221:23	308:24 309:9,10
248:4 252:18	<b>appeared</b> 38:24	108:25 140:14	221:23,24 222:25	309:13
264:10 270:10	100:1 111:16	171:1	223:7,11,11	<b>arrow</b> 32:14,15
284:3,18 306:22	299:21 312:4	<b>appropriately</b>	<b>argue</b> 153:3 308:14	<b>ARS</b> 253:24
307:1 314:11	<b>APPEARING</b> 3:17	189:22	<b>arguing</b> 308:15	<b>artery</b> 113:8 324:3
317:25 323:5	<b>appears</b> 28:3 91:4	<b>approve</b> 78:6	<b>Arisa</b> 161:20	<b>Article</b> 371:4
346:19 350:1,9,12	101:12 156:21	149:21	<b>Arizona</b> 3:11	<b>articulable</b> 250:11
354:11 356:21	292:4 299:16	<b>approved</b> 77:15,17	<b>arm</b> 50:24 52:1	250:14,18,19
<b>answered</b> 122:8	331:5 332:9 342:5	77:22 78:3 145:17	53:1 71:7 74:24	251:2,5,10 253:3
183:5 195:5	352:4	145:19 149:21	74:24 111:25	253:13 264:3
294:20 349:8,23	<b>Applicant</b> 4:10	<b>approximately</b>	133:8,12 135:4	<b>articular</b> 249:21
350:10,17 356:21	<b>application</b> 96:20	26:17 53:11 57:6	136:3,14,23	<b>articulate</b> 250:21
<b>answering</b> 14:12	139:25 140:10	356:12	191:15,25 200:5	251:19 287:25
<b>answers</b> 14:5	177:11 202:21	<b>approximation</b>	211:1,6 294:11	<b>asked</b> 46:5,13,25
122:11,12	236:25 241:11	356:5	312:23,24 332:10	112:14 122:21
<b>anterior</b> 89:22,24	298:14,15 301:19	<b>April</b> 13:24 14:1	<b>armed</b> 66:10,13	124:25 125:9,10
90:11,13 91:13	<b>applications</b> 139:6	18:12 65:24 66:13	132:18,20 137:15	126:18 127:18
<b>Anthony</b> 1:15,23	139:11,15 140:13	66:20	137:17,21 208:14	132:14,17 133:1
2:4 4:3 5:3 7:1,11	176:2 177:4,8,18	<b>arcing</b> 55:24 56:1,3	209:16 292:2	147:18 148:10,14
81:17 121:15,20	177:21 178:2	<b>area</b> 18:17 20:5,22	294:8 299:2,8	156:8 158:21
218:10,15 323:15	179:13 180:13,21	21:2,6 22:1,2,5,16	<b>arming</b> 137:5,7	159:22 177:16
323:20 369:21	182:4 183:4	22:25 23:2,5,8,15	138:2	182:16 186:17
373:3 374:21	240:11 242:25	23:17,24 27:3,21	<b>arms</b> 36:8 38:18,24	194:1,19 196:16
<b>anybody</b> 205:19	244:4	30:15 86:19,24	51:22 52:8,18,19	207:13 215:25
238:14 262:10	<b>applied</b> 73:4 179:7	90:2,15 92:14	62:5 69:11 72:10	227:22 231:4
319:11 326:4	201:3 243:9	125:15 126:14	74:8,23 75:2,3	233:1,5 253:21
332:20 347:9	273:10 279:6	212:14 213:4,8,11	87:13 261:1 262:6	259:12 260:8
<b>anybody's</b> 239:15	292:8 299:11	213:14,19,21,22	285:7 286:22	284:2,19 290:3,3
347:5	308:22 345:20	214:25 215:2,11	287:16 289:4,5	294:20 298:3,23
	<b>apply</b> 132:23 133:3	215:13 216:4,11	313:3,4,5,14	307:20,25 308:4

308:12 315:12	254:10,12 278:21	<b>attendance</b> 4:11	166:5 180:2	298:11 301:22,22
320:10 322:23	278:22 330:7	154:20	186:16 197:5,13	301:22,22 302:8
346:14 348:16,16	<b>assisted</b> 312:1	<b>attending</b> 82:20	197:18 239:10	303:5 318:24
349:8,15 350:3,22	<b>assisting</b> 111:18	<b>attention</b> 22:16	249:19 259:12	326:15 327:4
353:20 355:21	<b>associated</b> 106:18	97:7 118:7 282:14	313:22 317:11	334:3 344:10,11
358:13 360:2	<b>Association</b> 103:11	282:16 319:16	318:17 338:13	344:11,12 345:20
367:11,18	103:13	320:2 321:19,25	<b>Axon</b> 1:19 3:9,10	349:5,16 356:9
<b>asking</b> 10:15 26:3	<b>assume</b> 8:15 20:13	322:4,9,14 333:2	5:15,22 7:19 9:2	366:8 367:4
27:13 36:12	59:23 108:7 188:7	346:12,15	80:4,6 83:6 85:12	<b>backed</b> 14:11 346:2
113:24 132:2	189:9 328:13	<b>attest</b> 72:25 104:15	97:15 120:9 141:3	<b>background</b> 11:13
134:10 140:9	341:1	114:23 129:22	145:2 146:19,24	<b>backhoe</b> 33:25 34:6
156:4,15 162:8	<b>assumed</b> 254:2	144:23 156:1,5	147:1 163:15	34:14,19 35:21,23
171:5 175:16,16	334:16	201:9 222:22	165:1 183:25	36:8,10,17,20
177:13 182:23	<b>assumes</b> 50:8	223:3 224:20	184:16 185:17	40:3 46:25 47:2,4
187:5 223:2 226:9	<b>assuming</b> 58:12	<b>attorney</b> 223:15	220:20,22 228:17	47:14,16,22
226:12 227:12	200:2 368:2	<b>Attorney's</b> 10:22	231:24 233:13,19	260:25 285:22
228:7 230:5	<b>assumption</b> 65:1	<b>attorneys</b> 121:25	234:14,16 238:16	292:12,23 295:11
232:23 234:3	68:11 228:4,5	<b>August</b> 12:7,7,8	371:12	295:16 296:11
236:14 243:5	241:23 242:1	13:7 14:15	<b>Axon's</b> 348:4,12,18	302:24 303:12,17
244:13 258:24	274:19,20 276:2	<b>aunt's</b> 160:5		<b>backpedaling</b>
259:2 264:7	286:1 314:21	<b>aunts</b> 159:25	<b>B</b>	56:13
276:15 281:22	342:7,10	<b>authority</b> 97:15	<b>b</b> 29:20,23 371:14	<b>backs</b> 130:10,14
285:13 287:23	<b>asthma</b> 102:3,23	<b>authorized</b> 97:15	<b>B2</b> 172:23	292:5
297:18 307:4,19	<b>attach</b> 123:14	269:2,6 270:9,13	<b>bachelor's</b> 16:25	<b>backtracking</b> 56:13
316:11 317:18	<b>attached</b> 57:2	<b>automatic</b> 115:16	17:1,2,6,11	<b>backup</b> 47:1,7,12
320:19,20 321:11	151:17 153:14	<b>automatically</b>	<b>back</b> 8:1 12:8 13:6	<b>bad</b> 214:18
328:21 334:18	<b>attaching</b> 123:24	41:15 211:1	13:8,24 14:15,16	<b>balance</b> 171:12,15
346:3 366:22	<b>attack</b> 49:17	<b>autopsy</b> 4:21 89:2	14:17,19 30:4,24	173:3,12 174:18
<b>aspiration</b> 17:18	106:19	215:15,19 216:1	33:4,21,22 34:16	194:14 195:13
<b>assault</b> 49:2 50:17	<b>attacking</b> 368:5,10	216:15 331:7	34:18 49:7 51:1	<b>balanced</b> 172:6
50:18 107:2	<b>attempt</b> 35:20	<b>Autumn</b> 161:16	54:25 56:4 58:10	<b>balancing</b> 173:19
307:12	40:14 56:4 60:11	<b>available</b> 354:18	61:10 68:8,16,23	173:25 174:10
<b>assaulted</b> 277:20	70:23 72:12 107:2	<b>Avenue</b> 3:7	70:14 72:2,7 74:8	194:25
278:23	124:2 262:10	<b>avoid</b> 208:11 213:7	75:4 76:21 93:1	<b>Band-Aid</b> 282:19
<b>assessment</b> 204:16	328:2,21	213:9,20,22	99:9 115:11 116:7	<b>base</b> 125:17 266:23
237:25 238:3	<b>attempted</b> 58:8,10	218:25 219:6,14	121:11 123:15	<b>based</b> 37:14 39:7
<b>assigned</b> 18:16,20	60:24 61:15 62:17	222:16,24 223:6	125:1,5 154:11	39:17 43:4,8
19:2 329:1,2	63:13,14,16 67:24	226:17,20,23	158:17 162:24	48:20 55:7 56:7
<b>assignments</b> 18:18	68:22 69:3 72:20	235:3	181:11 182:7	62:19 63:25 73:8
329:5	254:13 284:11	<b>awake</b> 272:4	186:3 191:10,17	73:19,24 74:1
<b>assist</b> 21:10 74:10	296:15	314:25 338:13	191:20 194:11	89:7 92:5 105:21
137:6 256:6	<b>attempting</b> 56:12	<b>aware</b> 10:4,12 64:1	213:4 229:1	105:25 108:6
259:21	69:17 72:5 76:25	96:2 98:11 134:24	254:23 265:18	109:13 175:21
<b>assistance</b> 14:12	327:24	138:21,25 139:5,7	280:6,21,23	176:5 276:2 341:4
49:13 99:21	<b>attempts</b> 67:25	139:8,10,24 140:4	283:13 286:23	352:6 362:13
111:11 253:9	77:11	140:11,23 160:13	287:4,9 293:21	<b>basic</b> 232:9,10,12



245:2	178:12,15,16	<b>blink</b> 281:23	311:10 326:10,12	128:25
<b>Basically</b> 163:20	179:7 180:4,10,12	<b>block</b> 281:16	328:3 335:19,22	<b>call</b> 12:17 13:9
<b>basis</b> 45:14 46:5,14	180:19,20,24	<b>blocks</b> 252:10	339:1 344:23	18:17 21:1,12,14
235:18 341:3	181:1,12,22	<b>blood</b> 93:15,16	345:8	21:17,24 23:15
<b>Bates</b> 151:12,13,21	183:20,23 189:23	243:25,25	<b>breaths</b> 326:8	37:19 39:6,7
168:24	193:11 196:5	<b>board</b> 195:19 371:5	<b>BRENNEN</b> 1:17	72:16,18 131:12
<b>bathroom</b> 265:9	206:23,24,25	<b>body</b> 51:16 52:8	<b>brief</b> 73:16	158:8 198:2
<b>baton</b> 108:4	210:20 211:10	70:17 72:24 73:4	<b>Bright-line</b> 347:9	215:12 249:22
<b>beats</b> 18:17 325:8,8	220:2 226:16	86:24 124:11	<b>bring</b> 53:7 275:5	250:3,22 252:10
<b>becoming</b> 16:16	227:15 231:22	125:18 126:5,6	<b>Brooks</b> 160:14	254:22 255:24
63:1	232:6,9,16 250:1	128:4,9,11,20	<b>brothers</b> 159:15,22	259:20 262:15
<b>beep</b> 333:19	250:2 262:19,21	129:3,3,11 130:4	<b>brought</b> 9:1 10:23	273:2 278:11,18
<b>beeping</b> 363:2,5,8	263:4 264:19	131:7,9,11,21,24	12:24 13:6	297:7 311:20
363:12	267:21 271:1,17	241:11,19 243:2	<b>browbeating</b>	326:4 349:9
<b>beg</b> 5:13	277:23 278:17	269:24 280:1	288:14,15	<b>called</b> 15:8 47:4
<b>began</b> 244:21	285:4 289:12	286:14 291:22,23	<b>bruise</b> 282:21	94:11,21 110:17
<b>beginning</b> 81:15	290:11 303:13	293:4 312:20	<b>bruises</b> 282:7	111:15 160:20
121:18 218:13	308:7 312:22	313:11 321:8	<b>bucket</b> 34:19 35:23	251:14 311:22
312:9 323:18	318:19 319:19	334:5 335:10	36:8,11,17,20	<b>calling</b> 47:6 111:17
<b>begins</b> 5:2	321:9,24 322:3,13	342:25 343:2	47:3,4,22 260:25	252:22 255:2
<b>behaving</b> 259:23	322:18 332:19	344:6 369:2	295:16,19 296:11	270:12 343:15
<b>behavior</b> 40:4	340:18 347:22	<b>book</b> 152:10 153:10	302:24 303:12,17	<b>calls</b> 13:12 14:5,10
55:11 77:3,6	351:9 358:18	<b>boot</b> 54:25	<b>Buford</b> 3:16	14:12 316:23
210:11,13,16	<b>believed</b> 107:2	<b>Booth</b> 2:9	<b>building</b> 31:14,17	<b>calm</b> 50:20 296:5
258:12 261:8	113:9 271:19	<b>bottles</b> 34:8	32:5,8,22 33:5	<b>cam</b> 125:18 126:6
286:24 307:15,16	<b>Bello</b> 209:25	<b>bottom</b> 54:24 84:8	248:9,10 249:11	269:24 286:14
307:21 320:13,24	<b>belt</b> 107:25 259:3	97:6 120:5 169:2	250:7 255:14,17	313:11 342:25
321:2	<b>benefit</b> 171:12	243:22 269:19,20	255:19 285:16	369:2
<b>belief</b> 20:20 48:21	<b>benefits</b> 13:1	<b>bought</b> 196:11	292:15,18	<b>camera</b> 124:11
49:1,12 58:4,5	<b>best</b> 20:11 51:5,24	<b>bounds</b> 75:15	<b>bullet</b> 84:15 86:21	126:5 128:5,9,11
192:18 242:20	150:23 169:19	<b>brand</b> 15:8	87:3,8,12,18	128:20 129:3,4,12
250:5 277:14	220:6,8 221:14	<b>break</b> 8:18,20,23	88:13 94:10,24	129:23 130:2,5,8
306:6,8 314:2	358:14 373:4	61:4 81:9,21	227:21	130:13,17 131:1,2
<b>believe</b> 14:17 15:12	<b>better</b> 13:1 33:16	121:4,5,9 158:6,8	<b>bunch</b> 220:21	131:7,10,11,21,24
25:14 27:12 32:5	35:25 36:16,16	218:6 265:9,10,13	<b>bundle</b> 370:2	132:6,9 291:22,23
32:21 39:25 48:17	100:4 271:7 288:1	<b>breakdown</b> 343:8	<b>Bureau</b> 10:5,18	292:5 293:4
49:18 56:5 57:8	<b>beyond</b> 321:15	343:16	<b>business</b> 209:11	296:15,19 297:1,5
61:13,23 63:21	<b>big</b> 101:4	<b>breast</b> 219:18	<b>busted</b> 267:19,25	321:8 343:2
67:12 77:2 82:3	<b>bigger</b> 202:6	222:17	<b>button</b> 111:18,23	<b>cameras</b> 129:20
105:3 109:2 111:8	<b>bit</b> 12:16 16:21	<b>breath</b> 310:15	<b>buys</b> 73:18	130:23
113:12 116:12	53:8	311:4,5 327:19,25		<b>capability</b> 268:17
128:13 133:12	<b>bite</b> 315:8	<b>breathe</b> 275:24	<b>C</b>	<b>capable</b> 175:22
137:21 155:24	<b>blade</b> 344:14,15	327:24 328:6	<b>C 3:3</b> 29:20,23	<b>capacity</b> 1:12,14,16
162:14 168:12	345:3	<b>breathing</b> 71:9	<b>Calderon</b> 74:19	1:18 5:8 12:14
169:12 171:1	<b>blades</b> 344:13	111:3 112:15,24	347:19	183:14 205:4
175:22 176:1	<b>blanks</b> 122:5	125:25 310:13,23	<b>Calderon's</b> 128:23	372:8

<b>Captain</b> 74:20 329:18	131:6 137:14,17 137:21 151:15	<b>certification</b> 4:10 54:19 78:25 79:3	373:5	219:15,25 222:5
<b>capture</b> 78:20 292:14,17	153:23 176:1	79:18 80:13 81:21	<b>changing</b> 100:14 356:10	222:12,17 223:7
<b>captured</b> 293:1	215:5,16 222:4	82:21,24 155:22	<b>charge</b> 172:19 243:1 299:18	226:17,21 328:8
<b>car</b> 31:10 112:9	235:23 239:3	198:22	301:10 306:16	338:25 349:2
251:22 252:1	261:12 276:4	<b>certifications</b> 15:23 16:1,4	371:18	350:8,16 351:3,6
254:25 255:6	317:25 318:3	<b>certified</b> 15:24 16:7 16:8,8,10 77:18	<b>charged</b> 11:10 37:7 48:3 61:21 261:1	352:11,15,20
257:16 266:22	348:4 371:16,16	79:18 80:9 142:8	262:9 279:3	353:11 354:4,5,18
271:12 272:19	371:19 372:13	145:20 147:1	286:13	354:25 355:11,13
297:13 311:24	<b>catch</b> 175:5,6 311:5	156:22 371:7	<b>charges</b> 10:23 11:3 36:21 110:20	355:15,16 356:18
314:10,12 316:17	<b>cattle</b> 273:2	372:5,16	<b>charging</b> 47:13 48:22	357:1 358:17
316:19 317:8,16	<b>cause</b> 73:9 83:21 84:2 87:25 94:3	<b>certify</b> 141:25 149:3,25 156:8	<b>chase</b> 138:13 173:15,21 174:25	<b>child</b> 161:21,22 162:1
317:22 318:4,9,12	102:15 105:19	227:23 372:7,12	195:8	<b>children</b> 1:8 158:7 159:18 161:2
321:10,24 322:4	119:14,23 186:25	<b>certifying</b> 150:19	<b>chased</b> 253:12	175:1 195:7
322:10 323:24	187:22 214:5,7	<b>CEW</b> 4:10 15:2 18:9 40:15 42:9	<b>chasing</b> 174:12,14 174:23	<b>children's</b> 161:8
325:17 332:2	227:6,13 249:15	46:21 51:2 53:7	113:6,11 238:1	<b>choice</b> 217:20 234:13 273:23
338:20 339:1,3,19	249:20 253:3,22	54:9 55:9,12	270:16,19 271:7	352:16,19
341:16 342:2,17	253:23,24 264:13	71:23 77:23 82:23	272:15 310:4	<b>choose</b> 60:11 109:3 109:19 198:9
348:2	276:21 287:6	85:25 88:7 91:1	311:13 324:2	<b>chose</b> 106:19 233:11 329:20,21
<b>care</b> 97:17 266:16	331:13	93:11 94:3 98:2,4	327:7,21,22	<b>chosen</b> 144:11
266:19 267:4,8	<b>caused</b> 35:15 69:8 105:15,16 132:9	101:19 102:2	369:12	<b>chronic</b> 102:6 106:3
268:15,18 282:10	<b>causes</b> 54:14 101:19	109:3,7,20 110:4	<b>checked</b> 112:18,19 113:1,8 114:11	<b>CID</b> 361:19
318:14,22 319:16	<b>causing</b> 175:4	110:8 114:20	270:25 271:3	<b>circle</b> 28:6
319:20 320:2	<b>Cayton</b> 340:19 341:9	154:14 185:11,12	323:24 324:3	<b>circuit</b> 242:5
321:9 346:12,15	<b>CCR</b> 2:14 371:24 372:21	224:8 239:12,15	325:18 329:10,15	<b>circumstance</b> 175:19
346:21 347:11	<b>center</b> 213:8,12 219:10 371:7	368:4,16	338:23 339:5	<b>circumstances</b> 50:16 98:5 140:19
<b>Carolina</b> 161:7,13 161:18,25	<b>centered</b> 89:23 90:11	<b>CEWs</b> 83:10 84:2 85:1,10,13 87:8	340:6	165:7 169:21
<b>carotid</b> 113:8	<b>central</b> 360:8	93:13 97:23 98:11	<b>checking</b> 329:16	170:14,24 172:17
<b>carried</b> 338:20	<b>certain</b> 37:18 151:24 155:1	106:19 227:7	<b>checks</b> 329:6,6	172:18 179:15,24
<b>carry</b> 14:24 18:9 84:5 133:16 197:6	<b>causing</b> 175:4	<b>chain</b> 65:11	<b>cheek</b> 331:5 345:6	180:7 181:2,13,23
197:12,17 232:13	<b>Cayton</b> 340:19 341:9	<b>chance</b> 237:21	<b>chemistry</b> 93:16 243:25	193:20,24 211:2
232:15	<b>CCR</b> 2:14 371:24 372:21	<b>change</b> 56:20 60:18 102:15 138:12	<b>chest</b> 89:23 90:11 213:8,12,21,22	211:18,24 220:4
<b>carrying</b> 15:11 37:23	<b>center</b> 213:8,12 219:10 371:7	195:22 218:7,8	215:11,13,20	220:12 293:6
<b>cars</b> 313:20	<b>centered</b> 89:23 90:11	273:16 323:7,11	216:3,10,20,22	321:15 354:19
<b>cartridge</b> 58:14,15 59:1,2,2 60:12,19	<b>central</b> 360:8	341:24 373:6	217:2,15,16,21	<b>CIT</b> 16:12,16 257:21,24
72:18,19 337:4,11	<b>certain</b> 37:18 151:24 155:1	374:2	218:3,19 219:5,10	<b>citizen</b> 176:22 186:6
361:13	169:21 239:20	<b>changed</b> 223:17 353:21		<b>civil</b> 1:9 14:7
<b>cartridges</b> 58:21 60:18 200:12	269:25 274:23,24	<b>changes</b> 93:15,15 163:25 243:24		
<b>case</b> 77:10 104:9 122:9 123:19,21	275:7			
	<b>certainly</b> 27:15 37:16 39:25 43:24			
	47:20 100:2			
	264:19 294:14			
	<b>Certificate</b> 371:24 372:1,6,6,21			

<b>civilian</b> 162:8 274:5	<b>color</b> 218:23	264:4,14,15	<b>compute</b> 324:15	<b>confrontation</b>
<b>claiming</b> 191:16	<b>column</b> 65:17,24	277:15,19,23	<b>computers</b> 293:22	109:25 208:11
<b>clarification</b> 9:11	66:6,7,23 67:2	297:13	<b>concept</b> 50:7	<b>conjunction</b> 102:11
232:20 260:3	<b>combative</b> 207:22	<b>committing</b> 171:25	<b>concerned</b> 39:11	<b>connected</b> 362:19
<b>clarify</b> 8:13 58:14	208:8	<b>commonly</b> 109:24	113:16	<b>connection</b> 59:20
98:16 100:9	<b>combination</b>	<b>communications</b>	<b>conclude</b> 239:8	60:2,2,3 241:24
177:19 266:10	153:23 322:18	100:17	261:5,13 290:8	<b>connectivity</b> 73:17
<b>class</b> 96:20 163:3	<b>come</b> 13:8 18:23	<b>compared</b> 223:15	330:5	242:10
182:16 199:2	27:2 36:7,19,19	<b>comparison</b> 99:17	<b>concluded</b> 239:4	<b>Connor</b> 1:17
201:5 202:15	36:22 37:4 39:9	148:7	268:11 369:23	156:19 157:8
204:3 246:3	47:5 49:10 112:6	<b>compilation</b> 153:15	370:21	<b>consent</b> 157:25
<b>classes</b> 198:9	145:8 207:11	<b>complete</b> 77:22	<b>concludes</b> 369:20	<b>consider</b> 177:18
<b>classify</b> 109:7	265:3 267:12	242:5 244:17,23	<b>Concluding</b> 2:7	264:2 273:18
<b>classroom</b> 80:14,17	268:14 276:8,16	245:8	<b>conclusion</b> 80:20	<b>Considerations</b>
80:18 81:23,24	344:1 350:19	<b>completed</b> 19:18,20	260:19 307:11,16	88:5
199:13,22 201:17	<b>comes</b> 134:13	55:4 77:16 145:19	330:9	<b>considered</b> 109:11
202:22	<b>coming</b> 20:13 60:16	155:4 231:21	<b>conclusions</b> 307:9	<b>consisted</b> 199:8
<b>clear</b> 9:21 70:12	121:11 274:9,12	232:1 314:14	307:14	<b>consistent</b> 54:3
112:6 124:11	274:25 276:22	<b>completely</b> 114:16	<b>condensed</b> 370:7	82:25 90:6,20
235:15 303:17	305:8 319:2	143:5,25 240:18	370:16	92:20 202:8 305:9
348:11,17,17	327:19 328:10	240:22 242:5	<b>condition</b> 8:20	<b>consisting</b> 369:21
353:2,25 365:25	363:6	283:10 348:5	95:18 107:5	<b>contact</b> 35:19 53:17
368:22	<b>comma</b> 171:25	366:3	113:16 214:1	59:12 60:7 71:4
<b>clearing</b> 303:12	172:1 219:18	<b>compliance</b> 72:11	314:20	73:2 104:20 108:1
<b>clearly</b> 186:23	230:15	73:20 74:2 108:16	<b>conditions</b> 95:1,9	206:16 209:5
188:21 192:21	<b>command</b> 65:11	186:18 187:9,15	96:2 102:3,4,20	266:6 267:16
195:7 288:16	210:16 297:12	206:17 351:24	102:22,23 316:12	273:14,16 296:17
318:25 345:21	<b>commands</b> 36:6,19	362:18	367:22	<b>contacted</b> 267:10
348:5 355:24	36:22,25 37:6	<b>compliant</b> 43:6	<b>conduct</b> 48:21	371:11
357:24	40:14 46:22 49:10	193:25 206:16	76:25 97:17	<b>contingent</b> 170:12
<b>CLIFF</b> 1:13	61:1 72:9 207:11	304:15 306:10	278:20	<b>continue</b> 26:2 45:9
<b>clip</b> 200:24,25	210:14 278:1,4,5	<b>complied</b> 46:21	<b>conducted</b> 10:5,21	182:6 349:13
<b>clipped</b> 54:24	278:10	47:8 209:18 319:8	14:24 15:6,9 76:4	<b>continued</b> 217:1
<b>close</b> 87:20 92:12	<b>Commencing</b> 2:6	<b>complies</b> 31:3	76:13 89:2 119:14	374:1
110:6,9 285:25	<b>comments</b> 100:6,11	32:12 51:9	119:17,20,21	<b>continuing</b> 198:2
286:2 330:25	100:12,22	<b>comply</b> 37:6 43:13	162:16,19 164:11	<b>continuously</b> 44:5
336:11 369:15	<b>commission</b> 374:24	49:9 58:3 60:23	164:20,24 165:7	312:8
<b>closed</b> 281:9	<b>commit</b> 174:2	210:18 227:18	183:2	<b>continuum</b> 97:14
<b>closer</b> 53:8 217:8	<b>committed</b> 169:25	243:7 308:9 319:7	<b>conducting</b> 12:16	<b>contract</b> 371:14,16
<b>closest</b> 47:12	170:13 171:2,9,25	<b>complying</b> 36:11	<b>conductive</b> 89:18	<b>contradict</b> 341:8
<b>closing</b> 56:21	173:4,9,17,25	194:2 207:10	90:7,20	<b>contribute</b> 94:3
<b>coach</b> 100:14 184:9	174:1,13 175:12	210:7,14,15,20	<b>confident</b> 118:13	102:15
230:2 288:11	194:20 248:16	306:5	<b>confined</b> 273:6	<b>contributing</b>
<b>coaching</b> 230:4	249:16 250:12	<b>compromised</b>	<b>confirmation</b>	105:16
<b>collectively</b> 28:25	251:6,8,11,13	93:24 94:13,22	206:10	<b>control</b> 69:11 70:24
<b>collision</b> 25:8	252:4,11 253:4,17	102:14	<b>confirming</b> 104:25	71:6 72:3 74:25

87:13 111:24,25 179:10 187:20 188:2,5,6,17 189:1,6,10,11,14 189:21,24 190:2,9 190:14,17,17 191:24 192:2,9,13 192:16,19,25 193:16,24 194:2 207:4 241:3 242:7 256:23 305:11 344:1 351:24 <b>controversy</b> 235:13 235:20 <b>contusion</b> 90:2,16 <b>contusions</b> 282:8 331:8,20 <b>conversation</b> 309:24,25 337:13 <b>conversations</b> 25:23 <b>convince</b> 43:12,12 <b>Cook</b> 160:10 <b>copies</b> 115:21 168:22 225:12 <b>copy</b> 19:9 115:23 116:12 123:13 151:22 370:10 <b>corner</b> 32:1 <b>corotid</b> 324:3 339:6 340:6,12 <b>Corporation</b> 1:20 <b>correct</b> 8:7 12:12 13:17 14:25 15:9 15:24 18:14,15 20:2,3,14 22:24 36:23 37:24 40:6 40:21 41:5,23,24 42:2,7 50:10 51:3 53:3 54:10 57:25 58:19,20,24 59:4 59:7 64:12,14 66:11,21,22 67:22 68:3,11 76:19 78:13 79:21 82:1 84:12 85:16 95:13	103:3,4 104:10 106:10 110:14 117:14 119:22,25 122:21 124:3,4,6 124:8,13,15,16,17 124:20 125:8,25 126:9,15 127:2 128:1,2 129:5 130:25 131:4 132:24,25 133:4 134:7 135:16 136:15,20 137:16 141:3,9,16,19,22 142:1,4,9,15,24 145:3,15,20 146:1 146:2,4,14,17,25 147:2,9,18 148:8 148:12,16,22,23 149:1,5,9,22 154:24,25 155:2 155:13,14,25 156:12,20,23 157:6,9,11,23 162:12 163:21 164:21 165:2 169:14,15,18,21 169:25 170:4,6,7 170:9 171:12,19 172:5,12 174:11 176:7,10,17,18,20 176:21 179:14 180:6,22 184:1 185:15,18 186:18 186:21,22 187:1,9 187:10,11 189:3 190:21 191:10 193:13,14 194:21 195:9,10 197:25 198:22,23 204:18 204:19 205:16,17 214:10 216:1,4,8 216:11 217:9,12 217:22 218:3 219:6,11,22 220:1 221:17,18,24 222:2,5,8,17	226:2,18 227:25 229:12 233:10 235:3 239:5 240:12,16,18 241:4,6,8 246:16 248:11,17,18,20 249:2,4,6,8,10 262:4,7 267:12,16 267:20 268:12 269:9 273:24 274:19,21 279:5,7 279:8,11,12,13,14 280:16 284:13 285:8 286:5 292:6 292:15,16,18,19 292:25 294:6,15 296:21 299:3,9,12 300:9,15,18,19,21 300:25 301:6,11 301:14,17,18,20 301:21 302:13,14 302:17,21 304:12 306:14 312:9 314:4,6,8 315:17 319:17 320:14 321:25 322:1 323:25 326:3,21 328:23 329:22 336:4,5 337:8 338:14,15,20,23 338:24 339:2 344:20 345:15 348:24 349:3 351:15,17,18 356:2 358:14 360:18 363:15,25 367:10,23,25 368:11,13 372:9 373:4 <b>correction</b> 75:17 127:15 253:20 274:4 296:25 <b>correctly</b> 30:14 61:21 <b>Council</b> 371:5 <b>counsel</b> 5:19 99:24	100:7 101:8 122:9 123:11 225:10 371:16 372:12 <b>counselor</b> 349:14 <b>county</b> 1:13,15,17 1:19 5:8 11:14,17 11:22,25 12:8,11 13:3,6,8,21,22 14:15,23 15:17 76:3 78:5 79:21 79:24,24 82:1 84:23 85:6,11 111:10 145:14 148:25 160:8,10 160:12,14,16 162:18,24 164:10 164:16,20 165:14 167:11 168:6 169:11 198:10 208:22 224:24 234:1 236:18 371:3 372:3 <b>County's</b> 144:20 <b>couple</b> 115:13 124:21 158:19 261:10,10 278:2 303:16 335:24 359:12,18 <b>course</b> 4:11 82:6,24 96:21 146:16 154:20 156:9 162:13,20,21,25 163:2,6,10,20 164:5,18 182:1,11 182:14,19,24 183:2 196:25 200:22 221:17 224:9 225:19,21 226:1 231:21 232:21 234:18 238:16 246:18 370:11 <b>courses</b> 82:21 155:9 164:12,25 165:19 <b>coursework</b> 202:20	<b>court</b> 1:1 5:9,17,18 6:5,7,13 8:1 29:10 29:12 81:1 116:17 143:11 144:5 266:23 369:24 370:3,6,9,13,18 370:20 371:5,7,12 372:5,16 <b>courtroom</b> 349:14 <b>cover</b> 76:12 258:8 359:20 371:17 <b>covered</b> 227:12,15 227:20 <b>CPR</b> 16:9,10 <b>Craig</b> 3:6 5:25 <b>create</b> 56:19,22 109:14 <b>created</b> 78:21 <b>creates</b> 64:1 86:20 <b>creating</b> 55:19,22 86:6 178:20 <b>crime</b> 132:5 172:11 173:9,25 175:8,11 194:20 248:14,17 249:15 250:12,20 251:6,7,10,18,18 252:4,6,8,11,13 253:4,9,16 264:4 264:5,14,14 277:15,17 295:2 297:6,13 <b>crimes</b> 277:19 <b>criminal</b> 10:23 11:10 17:5,7 35:7 249:12 <b>crisis</b> 16:2 94:12,22 257:25 258:3,4 264:18 265:23 266:2 <b>crouched</b> 31:17 34:19 355:8 <b>current</b> 13:20 84:9 149:8 197:14 227:18 230:16 352:7 <b>currently</b> 11:14
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14:24 15:11 16:25 17:10,23 169:10 333:22 <b>curriculum</b> 80:22 82:1 <b>custody</b> 58:9 61:15 63:13,15 69:4 72:5 161:4 284:11 <b>custom</b> 97:13 <b>customary</b> 371:19 <b>cut</b> 362:25 <b>cuts</b> 282:7,8 <b>cwebster@twfl.c...</b> 3:8 <b>cycle</b> 55:4,5 59:18 363:3,7,9,13	<b>daughter's</b> 161:19 <b>day</b> 17:18 18:23 19:18 108:1 155:20 176:16 196:24 199:19 201:12 202:16,18 208:14 209:6 232:21 237:11 238:6 282:21 351:12,12,14,16 359:16 372:17 374:22 <b>days</b> 12:20 18:22 123:14 151:7 152:2,17 199:20 <b>DE</b> 1:20 <b>deadly</b> 167:7,10 169:20,24 170:2,5 170:8,18 171:3 172:10,13,23 175:8,18 194:19 <b>deal</b> 94:11,21 101:4 258:9 265:25 266:1,8 <b>dealing</b> 259:13 <b>death</b> 9:3 83:21 84:3,6 93:15 94:3 94:14,25 98:1,12 101:21 102:16 119:14,24 214:5 227:6,13 230:20 <b>deceased</b> 1:4,6,9 5:6 159:8 <b>December</b> 11:23,25 78:24 82:10 97:4 97:19 98:8 101:23 102:11,18 103:19 103:24 106:16 118:2,14 155:16 196:18 197:19 198:21 204:14 212:14 223:20 231:22 232:4 236:24 <b>decide</b> 144:10 <b>decided</b> 13:8 36:5	214:24 314:9 <b>decision</b> 56:23 256:11 317:7,11 317:14 318:8 <b>decisions</b> 317:1 <b>dedicated</b> 140:19 <b>deescalate</b> 50:14 <b>deescalating</b> 246:21 247:8,12 <b>deescalation</b> 42:21 50:2,4,8,14,24 134:4 135:8,13 246:14,15,23 247:2,5,25 296:2 296:12,15 <b>def</b> 340:22 <b>defend</b> 50:22 107:3 107:21 <b>defendant</b> 3:9 4:13 7:22 236:18 <b>defendants</b> 1:21 3:13 6:4 7:19 319:5 <b>defendants'</b> 122:23 145:14 146:8 147:16 148:3 168:24 169:5 198:15 203:12 218:19 221:1 <b>Defense</b> 19:10 22:12 30:9 63:18 75:21 78:9 81:5 88:23 96:7 116:22 <b>defensive</b> 187:18 <b>define</b> 166:11 177:7 177:10,17 232:24 238:19,22,25 337:21 <b>defined</b> 166:20 172:2 231:16 <b>defining</b> 189:6 <b>definitely</b> 37:20 263:8 297:9 <b>definition</b> 174:7 189:12 231:13 235:15 245:19	259:25 260:4,10 272:13 338:2 340:22 <b>definitive</b> 237:10 237:17 245:19 <b>degree</b> 16:25 17:1,3 17:6,11,17 73:10 73:11,13 75:11 246:1 353:10 <b>degrees</b> 158:22 <b>Deleware</b> 1:20 <b>deliberately</b> 352:15 353:11 355:6 <b>delirium</b> 102:5,24 103:3,8,18,21 104:6 231:6,10,14 231:19 232:24 233:12 234:19,22 235:11,14,16,20 235:23,24 236:10 237:1,5,10,12,15 237:17,20 238:8 238:12,17 245:17 245:18,20 246:4 348:22,25 <b>demeanor</b> 38:17,23 39:22 47:10 49:8 <b>demonstrate</b> 52:14 355:21 <b>demonstrated</b> 365:12 <b>denied</b> 127:1 <b>department</b> 12:1,6 15:17 40:7 42:19 77:17,22 78:3,5 79:15 80:22 109:7 133:11 134:22 139:9,12,15 140:5 140:8 141:2 142:23 143:20 144:9 145:1,19,23 148:24 149:14 150:6 164:16 165:5,6,17 176:5 183:13 195:20 196:6 202:14	208:23 224:24 232:14 234:2 238:15 269:3 274:8 275:12 319:15,25 320:7 346:11 <b>department's</b> 142:20 <b>depend</b> 170:23 <b>depending</b> 87:14 <b>depends</b> 172:16,17 202:15 258:15,23 259:8,9 278:7 337:20 <b>deploy</b> 40:15 42:5 43:13 51:2 52:7 53:21 56:23 58:11 58:25 67:21 72:17 72:17 110:4 209:19 214:24 290:2 360:25 369:3,10 <b>deployed</b> 46:22 51:24 53:25 54:17 55:12,25 56:2 58:16 68:22 77:9 89:11 205:9 209:17 239:3 287:12 290:6 291:12,14 299:14 299:14 304:18 311:22 336:23,24 337:3,4 346:8,11 348:21 356:2 357:14,17 358:6 368:16 <b>deploying</b> 58:12 73:11 88:7 205:7 304:12 368:4 <b>deployment</b> 51:8 51:17 52:4,5 53:21 54:9 55:10 55:15 56:8,11,24 60:8,9 62:18 77:4 77:11 88:5 89:9 92:22 93:11 97:23
---	--	--	---	--

**D**

**D** 4:1 29:20,23  
**dad's** 159:8  
**damage** 69:7 175:4  
**danger** 37:17 178:4  
178:10 179:3,6,14  
179:20 180:19  
181:9 182:6  
**dangerous** 110:3  
180:11 195:2  
314:18 315:1  
316:8,14,16  
**Daniel** 155:13,15  
156:23 219:22  
224:17 230:22  
**dark** 26:21 250:8  
**darker** 34:4  
**dash** 129:23  
**date** 11:10 13:24  
16:20 18:13 20:2  
65:24 66:3,20  
76:6 79:3 101:10  
117:8,13 118:7,12  
154:20 162:23  
164:6 204:21  
221:16  
**dated** 78:24 98:20  
118:3,3  
**daughter** 161:15



114:20 358:2 <b>deposed</b> 7:25 123:19 158:21 215:4 <b>deposition</b> 1:23 2:4 5:2,12 7:18 8:7 13:1 28:13 29:18 38:2 44:6 81:16 121:15,19 122:16 123:3,5,8,12,13 123:25 124:3,16 124:19,20 125:2,8 126:16 127:1,6,8 127:16,18,21,25 128:7 129:5 138:16,19,22 151:15,16,24 152:3 153:20 154:2 168:12,18 217:8 218:10,14 323:14,19 349:10 369:20 370:21 371:12,14,17 <b>deputies</b> 6:3 69:12 74:7,7,10,16 164:15 166:5 190:9 193:6 195:23 209:15 257:6 269:5 315:6 <b>deputy</b> 1:14,16,19 5:3 8:25 9:2 10:4 13:22 14:2,4,4,5,8 14:10,14,20,21,23 18:14,16 19:13 21:10,17,20,23 22:7 23:6 24:8 25:23,24 26:1,22 26:23 27:3,10 47:5,11,17 61:13 63:9,11,12 69:2,6 69:9 71:1,22 72:10 73:4 74:5 74:19,19,24 75:18 75:24 81:16,20 83:23 86:7 89:1 96:13 99:18	103:17 106:9 111:14,17 112:12 112:13,18,25 115:13 116:9 121:15,19,24 124:23 125:18 128:13,19,20,23 128:25 138:25 139:24 140:3 151:2 158:19 164:24 178:23 179:7 190:22 191:2,7 193:5,16 197:4,11,15,16 205:14 206:14,18 207:1 209:23,25 210:9,12,14 218:10,14,18 256:7,9 257:15 258:13 265:21 266:7 269:11 273:1 284:11 298:8 309:10,13 310:23 311:1 316:5 323:15,19 323:23 329:3,6,6 342:7,12 359:15 367:7 368:19 369:1,20 <b>deputy's</b> 101:6 <b>describe</b> 21:25 25:19 35:21 61:19 70:11 206:5 210:5 <b>described</b> 47:14 50:1 <b>describing</b> 61:14 90:25 <b>designed</b> 54:13 97:23 <b>Desiree</b> 161:11 <b>detail</b> 119:6 <b>detain</b> 210:8 <b>detained</b> 110:11,21 <b>detection</b> 16:5,6 <b>detective</b> 191:2 <b>determination</b> 11:2	304:24 <b>determine</b> 10:23 21:19 26:2 125:4 189:21 258:2 260:18 265:22 266:18 267:7 274:15 278:21 285:2 326:7,10 328:2,5 339:17 341:4 <b>determined</b> 262:18 305:4 <b>determining</b> 175:23 238:7 <b>device</b> 15:8,8 58:19 65:7 66:12 67:8 67:16 68:8,23 77:15 88:10 135:25 145:17 360:17,23 361:4,7 361:13 367:13 <b>diagnosis</b> 103:8 <b>dictate</b> 211:3 351:5 <b>dictated</b> 211:23,24 <b>die</b> 98:3 <b>difference</b> 14:3 16:15 91:17 98:22 98:23 119:20 120:8 178:19 271:24 302:2,3 <b>differences</b> 117:22 <b>different</b> 64:13 86:22 98:24 100:19 140:13 141:15 189:16 193:23,23 215:19 258:12,18 259:18 323:1 339:13 <b>differently</b> 343:13 <b>difficult</b> 310:24 <b>difficulty</b> 310:24 311:10 <b>direct</b> 22:16 97:7 227:21 231:5 <b>directed</b> 97:22 <b>direction</b> 32:16,18	33:2 286:10,17 <b>directionally</b> 25:10 32:20 <b>directions</b> 56:20 <b>directive</b> 97:14 <b>directives</b> 194:3 <b>directly</b> 36:21 49:10 61:22 74:14 290:12 <b>dirt</b> 28:4,5 30:15 70:3,19 190:1 345:5 346:16 <b>dis</b> 279:10 <b>disagree</b> 64:9 170:16 187:5,7 191:24 264:25 265:1 <b>disbelieve</b> 64:18 <b>discharge</b> 284:7 286:4 <b>discharged</b> 279:10 <b>disclosure</b> 371:1,6 <b>disconnects</b> 362:20 <b>discount</b> 371:19 <b>discovery</b> 98:19 <b>discuss</b> 44:17 164:15 182:16 227:17 236:7,12 <b>discussed</b> 103:18 103:25 104:2 119:4 129:8 135:7 147:21 164:19 165:17 183:12 211:20 245:18 <b>discussing</b> 103:21 245:23 <b>discussion</b> 27:3 99:16 112:4 182:3 183:1,17 200:8 270:12 <b>discussions</b> 100:13 <b>dispatch</b> 20:14 21:1 255:22 256:4 267:10 369:2,3,9 <b>dispatched</b> 20:17 20:18 21:23	<b>display</b> 360:9 <b>displayed</b> 237:19 <b>displaying</b> 50:2 76:24 77:3 <b>dispute</b> 115:2 160:19 279:9,15 <b>disqualified</b> 371:9 <b>distance</b> 52:24 56:12,19 88:5,9 88:10,19 91:23 97:24 285:18 315:20 <b>distances</b> 88:6 <b>distinguish</b> 208:7 <b>distress</b> 111:8 113:13 114:13 319:21,22 <b>District</b> 1:1,1 5:9 5:10 10:22 <b>ditch</b> 25:25 27:7 <b>Division</b> 1:2 5:10 <b>doctor</b> 235:20 <b>doctors</b> 235:16 <b>document</b> 19:15 63:23 78:15,17,19 89:5 101:10 143:12,15,23 146:13 150:19 151:25 154:19 155:22 156:6 157:5 167:5 168:17 176:5 196:3 222:20 223:6 224:4,6,16 224:22,24 227:22 228:5,6,22 229:4 230:24 233:23 235:7 282:2 298:10 <b>documents</b> 101:12 122:16 123:1 145:2,8 146:10 151:6,19 152:17 157:22 158:2,3 220:21 223:16 229:11
---	--	---	--	---

<b>doing</b> 17:13 18:5 29:11 31:15 35:25 36:14,16 72:4 99:12 104:16 132:4 144:10 153:8,9 173:10 193:25 198:12 237:25 255:20 257:14 285:1 304:1 308:13 329:24 330:11 <b>domestic</b> 160:25 <b>dot</b> 42:13,16,25 136:14 <b>double</b> 58:23 <b>doubt</b> 216:10 <b>download</b> 65:4,6,8 65:9,13 <b>downloaded</b> 64:8 64:24 <b>draw</b> 28:11,15 30:25 33:6 211:5 211:9 255:5,12,16 287:3,9 <b>drawing</b> 218:22 221:22 223:12 286:23 <b>drawn</b> 206:20,21 207:7,16 <b>drew</b> 42:9 209:15 255:8,18 260:5 <b>drills</b> 82:24 224:8 <b>drink</b> 272:3 <b>drive</b> 72:16,18,21 73:8,14,15 87:19 87:24 186:7,12,17 189:2 211:13,16 211:19,21 212:6 212:11,17 279:16 279:22 280:1,10 280:12 333:1,6,10 333:25 334:12,19 337:5 351:20,23 352:8 362:13,14 362:17 <b>driveway</b> 24:2	<b>driving</b> 26:4,7 173:22 252:15 <b>dropped</b> 58:5 60:19 <b>dropping</b> 57:23 58:2 <b>drug</b> 102:5,6 104:22 105:18 106:3,5 238:25 268:15,18 274:20 275:13,16 276:6 309:6 321:5 <b>drugs</b> 35:2 39:19 95:21 104:23 105:1,17,22 107:8 209:12 239:5,12 276:5,8,15,21 341:21 <b>due</b> 98:3 <b>duly</b> 1:3 5:4 7:2 <b>duration</b> 56:6 67:3 142:15 185:11,18 299:12 300:3,14 300:17,23 301:7 301:17,20 305:11 305:22 318:21 333:17 334:24 346:18 <b>durations</b> 322:21 <b>duty</b> 108:2 206:20 252:8,13 278:5 <hr/> <b>E</b> <b>E</b> 3:14 4:1 373:1,1 374:1,1 <b>earlier</b> 7:17 122:21 126:20 135:7 156:8 157:19 194:19 207:12 331:15 346:14 369:1 <b>early</b> 351:13 <b>easier</b> 29:15 72:3 <b>east</b> 25:14,15,16 <b>education</b> 16:23,24 158:22 175:21 198:3 242:24	276:20 <b>effect</b> 54:23 60:10 60:19 62:19,24 72:25 73:25 76:6 82:9 169:10 213:25 214:3 240:12 241:11 242:21 244:5,18 267:19 270:1 272:23 273:10 306:12,16 351:24 362:21 <b>effective</b> 55:9,15,18 56:8 60:5 73:2 82:6 96:24 108:12 117:9,13 118:7 178:6 212:6 221:4 224:13 225:16 299:22 319:1 <b>effectiveness</b> 108:10 242:15,19 <b>effects</b> 86:24 93:8 93:10,14 98:3 101:16,20 102:2 120:19 240:7 243:24 244:22 245:9 268:24 <b>eight</b> 13:12 79:6 81:22 155:13 163:4 198:24 199:14 203:22 221:2 227:2 229:20 294:3 300:20 364:7,21 <b>eight-hour</b> 79:9 163:2 <b>either</b> 31:22 65:13 72:17 100:6 109:14 136:9 156:3 180:11 181:25 182:11,14 183:2 207:5 209:17 278:18 <b>elaborate</b> 41:19 51:18 53:22 188:1 188:5 194:17	258:11 <b>elapsed</b> 255:8 <b>elbows</b> 31:18 <b>elective</b> 196:25 <b>electric</b> 304:12 <b>electrical</b> 119:17,21 212:8,23 213:24 214:16 243:1 298:17 306:16 <b>electricity</b> 55:14 241:18 242:21 <b>electronic</b> 370:14 370:16 <b>elevated</b> 107:12,14 <b>else's</b> 128:11,15 <b>emailed</b> 370:7 <b>employed</b> 11:14,22 12:23 79:20 <b>employee</b> 76:25 <b>employees</b> 77:16 80:7 145:18 <b>EMS</b> 111:15,17 112:2,4 113:15 114:5 267:14,16 267:18,21 268:3 270:15,24 272:15 311:21 337:13 340:19 346:4,8 369:11 <b>en</b> 369:11 <b>encounter</b> 252:16 265:22 293:15 312:9 <b>encountered</b> 25:3,5 <b>endangering</b> 195:6 <b>ends</b> 81:12 <b>energy</b> 14:25 15:6,9 76:4,13 84:2 89:18 90:7,21 119:14,20 162:16 162:19 164:11,20 164:25 165:8 183:2 <b>enforcement</b> 37:15 49:13 77:1 94:2 94:11 97:11 106:1	120:2 135:10 160:20 162:6,8 180:4 197:23 206:13 207:20 208:5 212:2 248:23 274:5 277:25 <b>enforcement's</b> 171:16 173:4 <b>engage</b> 50:4 <b>ensure</b> 328:25 329:10 <b>entail</b> 360:22 <b>entered</b> 28:4,8,16 28:20 207:16 <b>Enterprise</b> 1:19 3:9 3:10 5:23 7:20 371:12 <b>Enterprises</b> 3:6 5:15 <b>entire</b> 75:1 111:5 195:7 <b>entitled</b> 187:21 278:10 <b>entry</b> 78:24 <b>episode</b> 205:2 206:2 246:15 257:22 309:1,3 346:17 347:11 <b>equip</b> 195:23 <b>equipped</b> 129:23 <b>errata</b> 123:25 370:12 <b>error</b> 361:7 <b>especially</b> 178:5 212:4 <b>ESQUIRE</b> 3:3,6,10 3:14 <b>essentially</b> 69:11 73:15,17 74:5 <b>establish</b> 97:16 <b>established</b> 186:24 192:21 364:6 <b>Estate</b> 1:4 5:5 <b>estimate</b> 34:21 52:3 52:19 358:14,15
---	---	---	--	--

<b>estimates</b> 57:6	4:5,6 7:4 121:22	19:8,10,14 22:11	<b>exists</b> 180:20	<b>extra</b> 116:20
<b>estimation</b> 34:23	231:5 359:13	22:12,15 23:3	<b>exited</b> 32:24 33:3	<b>eye</b> 281:24
34:24	368:24	24:21,21 27:23	<b>expand</b> 87:20	<b>eyes</b> 219:15
<b>et</b> 5:6,8 373:2	<b>exceeded</b> 185:13,15	28:25 29:19,21,25	<b>expect</b> 55:9,11,13	
<b>evaluate</b> 319:16	<b>exception</b> 373:4	30:3,9 51:1 57:9	92:6,15	<b>F</b>
328:17	<b>Excerpt</b> 4:20	63:18,21 65:16	<b>experience</b> 37:14	<b>face</b> 62:10,12,15
<b>evaluated</b> 267:11	<b>excerpts</b> 82:4	75:20,21,24 78:8	39:7,17 43:8 55:7	70:3,19 219:15
320:9,13,24	<b>excessive</b> 9:7,7 11:6	78:9,12 80:24	56:7 89:8 92:5	222:16 277:21
322:21	139:1,6 140:1	81:5,8 82:3,18	105:21 106:1	280:25 281:3
<b>evaluating</b> 329:21	166:12,14 175:23	88:22,23 89:1,7	109:13,23 110:2	282:12 326:19
<b>evaluation</b> 266:16	176:2,6,8,12,20	93:1,3 96:6,7,10	135:10 175:22	331:1,2,3,8,20
266:19 267:4,8	176:23 177:4,7,11	96:14,16 99:19	179:11 242:25	345:5
318:22 321:2,4,10	177:18,22 178:2	100:16 101:15	276:21 277:2	<b>facedown</b> 313:1,14
330:6 346:20	178:14,18 179:2	115:20 116:10,22	319:15 325:5	344:14,17
347:7,12	182:16 188:11,21	116:25 117:2,4,12	<b>experienced</b> 89:15	<b>facial</b> 48:10
<b>event</b> 64:7 66:7,24	195:8	117:23,23 118:18	<b>experiences</b> 43:5	<b>facing</b> 326:19
68:5 132:8 137:9	<b>excited</b> 102:4,24	118:19,20 119:12	<b>experiencing</b>	<b>fact</b> 46:13 51:2
164:7,8 217:9,12	103:3,7,18,21	120:3,3,15,24,24	106:13	82:13 85:18 95:16
298:18,19 372:14	104:6 231:6,10,13	122:23 145:14	<b>expertise</b> 262:11	98:10 105:1
<b>events</b> 64:2,24	231:19 232:24	146:8 147:16	<b>experts</b> 97:12	113:15 118:13
131:23,23 190:6	233:11 234:19,22	148:3 151:3	<b>expires</b> 374:24	124:11 125:3,18
210:22	235:11,13,15,20	153:14,19,22	<b>explain</b> 225:24	126:20 147:5
<b>eventually</b> 74:3	235:23,24 236:9	154:7,13 167:23	226:13,20,22,24	150:10,22 155:8
<b>everybody</b> 201:4,9	237:1,4,10,12,15	168:5,9,12 184:20	231:18 240:8	156:17 170:20
335:19,20,22	237:17,20 238:8	184:24 185:1,4,5	307:16 308:25	171:21 182:15
348:6	238:12,17 245:17	198:15 202:4,6	309:4	183:3 202:1,2
<b>everything's</b>	245:18,20 246:4	203:10,12,20	<b>explained</b> 26:1	207:10 214:12
254:20	348:21,25	216:1 218:19	226:17,25 228:21	217:19 222:7
<b>evidence</b> 248:16	<b>exclude</b> 154:13	220:15,19 221:5	308:19	227:20 228:8
<b>ex-wife</b> 27:2 161:15	<b>exclusive</b> 371:15	222:24 223:24	<b>explanation</b> 123:15	229:8 231:1
<b>exact</b> 156:16	<b>excuse</b> 27:17 79:24	224:3 225:2,6,11	126:21	249:22,23 251:14
366:24 367:8	96:22 186:5	226:8 228:25	<b>explanations</b>	252:24 271:15
<b>exactly</b> 16:13 20:17	266:13	229:9,17,18	123:25	274:23 275:5
22:4 24:16 39:6	<b>exerted</b> 214:15	243:18 284:15	<b>exposure</b> 54:20,22	280:10 287:15
71:17 73:6 80:1	<b>exerting</b> 214:10	298:13 351:9	54:24 201:9	294:24 314:23,23
112:21 147:13	<b>exertion</b> 98:4	363:17 364:5	273:17	322:6 336:10
153:21 158:3	<b>exhausted</b> 104:14	366:9 367:1,2,4,8	<b>exposures</b> 185:11	341:11 342:10
162:23 182:13	107:18 275:23	<b>exhibits</b> 4:7,13	201:10	355:19
199:11 202:11	310:11	29:15 117:17	<b>expressions</b> 48:10	<b>factors</b> 87:14 95:2
222:14 231:12	<b>exhaustion</b> 102:5	141:15 154:10	<b>extend</b> 52:8	95:10 105:16
236:2 271:1	104:12 214:9	<b>exigent</b> 140:19	<b>extended</b> 355:19	260:18 286:7
284:24 313:16	238:22	179:15,23,23	356:17 357:16,22	<b>facts</b> 264:5 281:25
324:12 330:2	<b>exhibit</b> 4:9,10,10	180:7 181:2,13,23	358:16,24 359:1	285:8 317:25
356:12	4:11,11,15,16,17	354:19	<b>extensions</b> 152:19	318:3,11 321:15
<b>exam</b> 202:16	4:17,18,18,19,19	<b>exist</b> 179:16,24	<b>extent</b> 99:20 170:11	322:3
<b>examination</b> 4:4,5	4:20,20,21,21,22	181:3 182:6	<b>external</b> 134:8	<b>factual</b> 175:23

178:11 195:9	211:5,9 242:21	97:22 102:21	<b>fled</b> 36:12 75:10	97:25 98:1 106:20
226:6 241:16	323:9 327:19	114:1,2,19 115:15	277:24 295:1	109:8,11 139:1
<b>failed</b> 115:14	328:10	115:22 119:12	297:5	165:22 166:6,12
277:25,25	<b>feet</b> 34:25 52:6,21	120:18 121:9	<b>flee</b> 75:15 207:24	166:14,14,17,21
<b>failure</b> 54:14 86:20	52:21 57:6,13,14	123:4 124:13,16	307:13	166:24 167:7,11
230:19	75:15 315:15,18	124:20 127:1,6,16	<b>fleeing</b> 172:10	168:6,6 169:7,10
<b>fair</b> 8:16,23 59:19	356:1,1,17,25	127:18,21 129:5	208:2 252:5 295:4	169:17,20,24
113:18 136:22	357:5 358:1,7,14	146:13 159:13	297:9	170:2,5,8,12,19
172:9 204:15,16	<b>fell</b> 69:9,10 283:8	169:13 181:25	<b>flip</b> 30:4	171:3 172:6,10,13
207:6 238:3	283:16	195:19 198:21	<b>floor</b> 184:16 371:8	172:24 174:13
284:17,21 345:13	<b>felonies</b> 172:1,2	199:23 201:13	<b>foam</b> 105:20,22	175:8,18,24 176:2
364:12	<b>felt</b> 113:9 243:1	203:19 206:3,5,7	274:9,12,15,25	176:6,9,12,20,23
<b>fairly</b> 239:20	306:16 324:21	225:13 248:6	276:8,16,22 285:2	186:25 187:8,22
<b>fall</b> 283:10	<b>field</b> 89:15 95:12	253:8 270:15,25	285:16,21,24	188:11 193:12
<b>falling</b> 328:7	204:2 205:6	271:4 274:11	286:5 336:3,7,12	194:15,19 195:3
<b>false</b> 152:5 238:9	<b>fifth</b> 161:21,22	277:19 279:4,6,22	368:9	195:14 206:15,18
327:9	162:1	285:2,7,8,14	<b>foaming</b> 105:5,9	206:23 212:8,23
<b>familiar</b> 8:6 24:25	<b>fight</b> 332:4	286:15 296:1	<b>focus</b> 14:8	246:21 315:18
25:2 76:9 240:6	<b>fighting</b> 178:12	299:5,9 302:3	<b>follow</b> 40:14 65:20	<b>forcible</b> 172:2
<b>familiarize</b> 96:14	<b>figure</b> 247:6	303:10 318:24	73:17,18 84:22	<b>foregoing</b> 372:9
<b>family</b> 9:1 159:5	<b>file</b> 100:4	323:4 333:24	85:14,24 142:20	<b>forgive</b> 26:9 33:9
160:3,15,19	<b>filed</b> 11:4	368:9	149:8 150:1,7,11	33:23
254:22	<b>fill</b> 122:4 309:16	<b>fist</b> 281:10 287:3	150:20 156:10	<b>forgot</b> 281:13 293:7
<b>far</b> 10:15 16:23	<b>finally</b> 110:11	<b>five</b> 59:18 67:3	181:22 230:16,23	293:9 347:20
25:10 34:21 52:3	270:19	80:25 82:18 115:3	231:2 232:17	<b>form</b> 9:12,14 37:25
54:23 57:5 58:2	<b>financial</b> 371:19	115:16 161:3	277:25 278:5	42:21 43:16,17
62:14,25 65:13,17	<b>find</b> 49:24 349:20	203:21 279:16	<b>follow-up</b> 87:19	44:8,22 45:2,16
95:8 98:23 99:17	<b>fine</b> 9:16 100:10	299:12,18 300:1,3	121:6	46:11 47:18 48:8
100:1 101:11	101:3 183:10	300:14,17,23	<b>followed</b> 348:8	48:24 49:3,21
114:13,13 115:14	254:20 288:9	301:7,10,11,16	<b>following</b> 136:13	50:9 53:4,10
178:2 195:21	363:11	302:3 315:5	232:7 371:5 373:5	57:21 59:5,8,13
205:7 207:22	<b>finger</b> 324:8	323:19 324:13	<b>follows</b> 7:3 181:21	59:22 60:13 61:25
215:23 237:9	<b>fingers</b> 269:18	347:23 369:21	<b>footage</b> 124:11	68:9,25 73:22
240:15 252:16	<b>finish</b> 156:9	<b>five-second</b> 55:5	126:7 128:5,9,12	76:14 85:15,20
327:6,15,17	<b>fire</b> 265:12	<b>five-sixteenth</b> 90:1	128:20,24 129:1,3	86:2,9 91:2,21
342:19 352:17	<b>firearm</b> 108:3,24	<b>fixing</b> 135:2 287:14	129:4,12 130:1,5	92:1,9,18,23
356:13 358:11,19	108:24,24 109:4	332:25	130:17 321:8	93:21 94:7,18
<b>fast</b> 13:14 324:23	<b>fired</b> 171:24	<b>flailing</b> 36:8 38:18	343:1,2	95:6,14 96:4
336:18	<b>first</b> 7:2 8:22 20:1	38:24 261:1 262:6	<b>footnote</b> 97:8 120:1	103:23 106:21
<b>faster</b> 56:22	22:2,16 23:2,3,6	285:7	120:5	107:22 109:16
<b>fault</b> 360:24 361:7	25:22 30:20 31:1	<b>flashlight</b> 35:24	<b>footnotes</b> 97:7	126:2 135:17
<b>faults</b> 360:17	53:14 54:18 57:9	40:21,23,24 41:4	<b>force</b> 4:11 9:7,8	136:5,6,25 137:24
<b>feature</b> 186:21	59:19 60:6,9	41:9,15 124:7,12	11:7,11 40:13	139:3 141:5,6,10
<b>February</b> 18:1	67:21 76:11,21,22	126:12 135:16	84:5,16,19,22	142:5,10,11,16,17
169:14	78:18 82:5,17	137:8,9,16 281:20	85:3,14,19 86:6	142:25 143:1,8
<b>feel</b> 24:11 45:13	84:15 85:3 86:21	361:18	87:19 94:2 97:12	144:14,15 145:4,5

146:6 147:4,10,11 147:20 148:5 149:16 150:2,12 155:22,24 156:13 156:14 157:14,15 163:16 164:1 166:8,13,19,25 170:10,21 171:6,7 171:18 172:21 173:7 174:3,16 175:10 177:5,12 177:23 178:24 179:22 180:8,15 180:23,25 183:19 184:3 185:20 186:9 187:2,13,24 188:18 189:4,15 190:3,15 191:11 192:3,10,23 193:17,21 194:22 195:11,25 199:9 204:4 212:19 214:11,19,20 216:12 222:9 223:21 226:3 228:2,3,19,20 229:6,7 231:25 233:14 234:4,15 234:20 235:5,7 236:20 237:3 238:10 239:6 240:1,19 241:13 241:21 242:8 243:11 244:7,8,25 245:1,11,12 246:6 249:17,18 253:5 256:25 258:14 259:4,7,24 260:13 261:21 262:12,22 263:10,19 264:6 264:21 266:3 268:9 270:4 271:8 271:13,18 272:6 272:10 275:8 276:11,17 278:6 279:18 280:20	281:21 282:4,24 285:11 286:18,25 287:18 289:17,24 290:21 291:2 293:12,17 294:16 295:3 297:14 299:13,19,20 300:8 301:1,23,24 302:18 303:20 305:2,13,14 306:18,19 307:18 308:17 309:21,22 310:1,17,25 311:6 312:16 313:7,15 313:21 314:19 315:22 316:6,21 316:22 317:2,17 317:23 318:6,16 318:23 319:18 320:3,15 321:12 322:5,15,22 325:1 327:10 328:12 330:1,18,23 331:4 331:10,14 333:11 334:9 335:7,13 337:1,25 338:1,7 338:16 339:20 340:24 343:17,18 343:23 345:16 346:22 347:13 348:10,23 351:1 352:3,12,13 353:7 353:9 356:3,20 357:2 358:4,8,9 360:11,20 361:1,9 361:14,20,24 363:14 367:16,24 368:6,12,17 <b>formal</b> 103:8 <b>formally</b> 80:6 <b>forms</b> 147:7 157:17 157:25 <b>forth</b> 30:4 <b>forward</b> 69:9 <b>fought</b> 75:10 <b>found</b> 25:7 112:20	252:17 <b>foundation</b> 9:14 144:15 145:5 146:6 147:4 156:13 157:15 163:17 164:1 179:22 180:8,25 183:19 204:5 214:11,20 226:4 228:2,20 229:6 231:25 233:14 234:4,15 235:7 241:14,21 244:9 299:20 306:19,22 348:10 <b>four</b> 24:21 29:1,7 67:8,17 127:24 129:6 171:23 203:21 218:14 242:25 244:4 261:4 279:11 301:20 323:14 333:17 <b>fourth</b> 227:17 301:13 306:2 <b>frame</b> 62:14 114:23 131:25 301:6 <b>Frank</b> 3:18 5:16 <b>free</b> 24:11 83:11 176:23 177:4 186:6,11,24 187:21 227:8 <b>front</b> 33:5 52:18 63:21 82:4 89:3 116:9 143:12 145:13 184:21 215:12,13 217:4 217:21 298:13 326:19 328:10 358:17 360:9 363:18 <b>full</b> 7:8 12:5,9 49:14 55:5 273:2 333:17 370:17 <b>fully</b> 141:25 142:4 232:16 358:24	<b>function</b> 62:23 <b>further</b> 4:5 56:21 193:12 214:17 217:19 359:13 369:14 372:12 <b>future</b> 173:11 <hr/> <b>G</b> <hr/> <b>G</b> 373:1 374:1 <b>gain</b> 69:11 72:11 74:2,25 108:16 236:9 <b>gained</b> 206:17 235:19 <b>gap</b> 56:21 138:2 <b>gasping</b> 310:15 311:4 327:25 <b>gather</b> 256:16 <b>GBI</b> 10:17,18 64:21 65:15 166:5 <b>gears</b> 138:12 <b>Gene</b> 1:11 5:6 <b>general</b> 84:17 85:3 169:7 <b>generally</b> 117:19 117:22 173:24 195:13 197:23 <b>generated</b> 242:14 <b>genital</b> 223:7 <b>genitals</b> 222:16 <b>gentleman</b> 210:6 <b>gentlemen</b> 155:7 <b>Georgia</b> 1:1,13,15 1:17,19 2:10 3:4,7 3:16 5:8,10,14 10:5,17 20:5 22:19 159:1,3,7 159:16,19,22 160:3 167:19 371:2,5,7 372:2,6 372:16 <b>getting</b> 70:24 73:12 74:10 195:15 330:21 <b>give</b> 6:10 53:20 61:1 65:7,10,12	116:13,16,19 122:12 138:7 154:5,10 158:8 179:13 201:19 211:18 235:15 237:24 256:18 258:24 266:7 269:12 278:9,10 297:12 309:8 <b>given</b> 60:9 127:6 129:5 141:12 148:21 165:1 194:13 212:10,13 212:24 220:4,12 223:3 230:24 238:15 245:20 251:25 252:3 269:16 275:13 321:17 371:19 <b>gives</b> 73:16 <b>giving</b> 36:6,18,25 72:8 259:2 278:1 278:4 <b>Glock</b> 134:8 <b>go</b> 7:13,14 8:9,22 16:20 20:23 22:4 23:17 29:3 34:17 45:4,8 47:19 49:7 59:25 63:5 65:23 66:23 70:17 81:8 99:3 109:10 115:3 115:14,24 116:21 117:7,16,19 118:18 129:15 145:12 158:10,11 167:5 170:14 186:3 188:10,12 192:11 194:4 196:10 199:7,25 201:25 203:11 211:5 216:22 217:16 226:13 229:1 240:2,10 246:12 249:14 253:22 254:9 255:22,25 256:11
---	--	--	--	---



257:12 261:22	172:14 174:19	<b>grade</b> 203:4,7	153:2 216:7	258:24 346:9
270:19 271:7	181:17 186:1	<b>grading</b> 203:8	333:17 356:25	<b>hands</b> 36:7,18,19
272:15 280:23	194:8 195:3,14	<b>graduated</b> 11:18,19	359:1	37:3,4,13,23
283:19 290:22	197:6 201:20	11:21	<b>halfway</b> 9:21 117:8	48:12,12 49:16
293:18,24 312:4	206:8 214:18	<b>granted</b> 152:19	<b>Hall</b> 2:9 20:5 22:1,6	57:24 60:22 61:15
315:9 317:4 319:6	215:5,9,21 216:25	<b>Great</b> 17:19 28:18	22:19,23 23:10,11	70:5,8 109:11,14
329:21 330:10	217:4 218:11	<b>greater</b> 87:3	23:14,17,20,25	109:20 110:5
342:16,17 349:5	220:18 225:7,11	<b>green</b> 218:23	24:2,3,8,18,19,23	111:21 189:25
349:16 353:23	227:3 228:9	221:23 222:2	25:12 27:16,18	190:18 208:11
354:1,4,24 366:19	241:18 243:7	223:11	28:8 30:12	287:9,17 288:3,6
<b>God</b> 36:3 37:8	247:6 250:22	<b>groan</b> 340:16	<b>Hancock</b> 74:19	289:14,19 295:18
38:22 71:16,20	254:23 255:20	<b>groin</b> 213:8,11	112:12,13,18,25	295:24 296:12
260:22	256:20 257:10,11	222:5	329:2,3,6 347:19	303:19 327:3
<b>goes</b> 60:2 70:16	257:12 259:9	<b>ground</b> 55:3 62:6	<b>Hancock's</b> 128:20	358:16
83:14 89:22	265:12,16 273:16	62:16 69:16,20	<b>hand</b> 6:8 40:24	<b>hands-on</b> 82:23
102:13 269:19	286:23 287:10,11	71:2 72:1 124:25	41:9 70:13,17,22	<b>Hang</b> 264:1
<b>going</b> 8:15 9:23	287:25 289:15	190:13 192:8	126:19,24 127:2,7	<b>hanging</b> 359:16
12:11,19 16:15	290:13,14 291:19	283:7,8,10,11,19	127:19,22 151:8	<b>happen</b> 189:2
18:12 21:19 22:10	293:6,24 294:12	283:22,24 284:1,7	167:4 190:21	<b>happened</b> 25:20
26:1,12 27:16,17	302:8 303:7 306:6	304:11 306:4,15	191:2,3,8,15,19	35:22 65:2 101:1
27:23 28:12 29:25	306:9 307:11,12	309:20 310:4	191:20 192:2,9	169:18 210:23
30:3 36:5 40:25	307:13 308:9,14	311:10 314:16	215:5 225:11	216:20 281:23
44:4 45:10 48:18	315:18 318:24	315:2,5 316:20	281:9 315:9 327:6	283:5 309:9
49:14,15 50:19,19	323:5,16 332:24	330:25 331:3,9,23	327:12,15 328:9	351:13 352:11
51:1 52:16 53:21	333:1,22 334:3	<b>grunt</b> 340:16	330:17,19 332:13	<b>happening</b> 336:17
56:4 60:8,16,23	335:25 341:24	<b>Guard</b> 17:24	332:14 356:18	336:18
61:7 66:16 70:17	343:16,25 344:1	<b>guardian</b> 1:7	357:1 372:15	<b>happens</b> 273:3
72:24 76:11 78:17	349:5,9,13 351:4	<b>guess</b> 170:23	<b>handcuff</b> 75:4	<b>hard</b> 32:15 185:2
78:23 81:13 82:12	351:5,8 353:14,24	172:15 228:1	191:4 241:5 309:5	<b>harm</b> 171:17 173:3
82:17 83:10 89:7	353:25 356:9	293:5	331:23	173:5,10,25 174:1
90:5 93:1,1 97:7	359:9 365:16	<b>guidance</b> 97:13,13	<b>handcuffed</b> 74:11	174:2 181:4
99:5 100:8 101:5	367:4 369:22	97:15 120:2	188:8,15,16	247:23 289:12
101:25 108:13,14	<b>good</b> 7:6,7 45:25	<b>Guide</b> 4:9 221:4	192:17,22 193:11	307:11 315:5,12
109:14,20 110:20	59:11,20 61:3	<b>gun</b> 132:22 133:15	193:16 277:11	315:13,24 316:2
114:3 115:4,8,19	205:5 214:22	134:6	313:14 314:16,25	<b>harmed</b> 316:5
116:4,15,18 117:2	241:24 293:22	<b>guy</b> 132:13 172:9	315:4 316:4	<b>hate</b> 359:7
117:17,20,21	<b>good-faith</b> 45:14	174:12,23 175:5	318:20	<b>hates</b> 36:3 37:9
118:18 119:5,6,7	<b>Google</b> 236:1	195:15 265:3	<b>handcuffing</b> 74:15	38:22 71:16,21
121:8,9,10,16	<b>gosh</b> 322:22 364:14	267:11 271:7	<b>handcuffs</b> 63:15,16	260:22
132:12 136:2	<b>gotten</b> 150:25	347:20	69:13,17,22 72:6	<b>hazard</b> 175:15
137:13,20 138:12	151:16 152:22	<b>guy's</b> 194:20	74:4,9,23 192:14	178:20
138:13 141:1	306:15	<b>guys</b> 19:9 151:5	<b>handed</b> 99:13	<b>head</b> 9:15 38:19
143:9 144:2 151:1	<b>government</b> 194:14		100:16 141:14	48:12 62:5 70:16
151:9 152:10	194:25 195:15	<b>H</b>	224:6	70:21,24 89:23
154:10 156:5	<b>GPSTC</b> 167:12,17	<b>half</b> 91:7,18,19	<b>Handheld</b> 154:14	90:12 91:8,9
158:14 168:4	167:19	92:3,6,16 152:4	<b>handle</b> 200:2	113:19 134:1

162:9 186:14 188:17,22 205:24 213:8,11 216:6,8 219:15 222:5 223:7 287:16,17 288:3,7 289:5,6 295:6 335:16 <b>headlights</b> 31:10 33:1,15 <b>health</b> 35:4 95:24 103:15 107:5 258:7 259:14 262:11,16,18 263:17 265:23 266:2 267:4,4 321:1 343:22,24 346:17 347:11 <b>hear</b> 26:8 27:21 30:14 55:13,16 56:1 114:8 207:12 304:12 333:19 335:21,22 344:23 346:5 362:24 363:2 369:2 <b>heard</b> 31:22 114:2 212:12 256:4 267:16,18 280:15 342:21 346:6 365:9,11 369:7 <b>hearing</b> 56:4 113:21 <b>heart</b> 93:16 102:3 102:22 107:14 213:23,25 214:7 214:16 219:16 222:17 226:21 227:1 243:25 325:12 <b>heart's</b> 226:25 <b>heavily</b> 310:13 335:19 <b>heavy</b> 344:23 <b>heightened</b> 37:20 <b>heightens</b> 297:10 <b>held</b> 5:12 <b>help</b> 20:9,22 21:15	22:25 26:3 27:14 35:15,15 39:8,11 39:13 41:10 50:20 123:10 247:15,22 249:23 250:23 251:15,18,20,21 252:22 254:11,15 255:3,3 319:15 332:2,5 343:15 <b>helpful</b> 343:10 <b>Henderson</b> 1:13 3:13 74:20,21 128:19 270:2 329:13,16,19,21 329:24 330:5,11 347:25 <b>Henderson's</b> 270:20 <b>Henrich</b> 3:6 <b>hey</b> 254:14,19,22 255:2 309:14 326:5 332:1 <b>hid</b> 35:21,23 302:15 <b>hidden</b> 294:24 <b>hiding</b> 40:3 46:24 47:14 207:10,17 260:25 262:3 285:7 295:10 <b>high</b> 107:16 173:15 281:24 <b>higher</b> 87:4 325:12 <b>highest</b> 16:24 <b>hindsight</b> 321:14 <b>history</b> 35:7 78:20 106:5 206:12 207:8,9,20,23,23 208:2,3 <b>hit</b> 23:17 62:9 188:17,22 189:3 215:11,12 216:19 217:21 273:19 278:25 279:2 280:17,19,25 281:2,5,9,12,18 282:23 283:2,4,5 283:21 286:23	287:14 289:15 290:14 <b>hitting</b> 292:14 <b>hobble</b> 75:6,9,11 312:11 314:17 315:1,4,16,17 316:4 318:20 <b>hold</b> 17:6 69:11 70:3,6 74:6 194:4 266:20 <b>holding</b> 70:19 71:1 111:18 189:25 192:8 281:19,19 330:17 <b>hollered</b> 364:5 <b>holster</b> 133:18,22 134:13 200:5 211:10 <b>homeowner</b> 207:19 209:5 <b>HON</b> 1:11 <b>honest</b> 230:5 273:20 <b>honestly</b> 60:14 215:1 269:7 327:21 <b>Honorable</b> 5:6 <b>hope</b> 359:8 <b>hopes</b> 56:19 <b>hormones</b> 93:17 244:1 <b>hostile</b> 38:9 48:14 62:8 <b>hour</b> 8:18 173:21 354:11 <b>hours</b> 79:6 81:22 155:20 162:25 163:4,6 197:24 198:6,9,24 199:13 199:14 <b>house</b> 28:2 206:8 206:10,11,13 207:18,18,25 252:10,10 <b>human</b> 185:12 <b>hurry</b> 47:15 298:4	<b>hurt</b> 98:3 290:13 341:18 <b>hush</b> 349:7 <b>hypothetical</b> 183:3 195:5 201:25 202:2 317:19 <b>hypotheticals</b> 182:15 278:3 318:1 <hr/> <b>I</b> <hr/> <b>idea</b> 24:12 69:23 237:1 247:4 252:24 274:17 329:9 <b>ideal</b> 217:25 241:7 242:6 244:6 351:3 351:5 358:1 <b>ideally</b> 217:2,20 219:24 220:3,3,4 220:6,7,11 354:5 <b>identical</b> 148:8,11 148:16 230:10,11 <b>identification</b> 19:11 22:13 30:10 63:19 75:22 78:10 81:6 88:24 96:8 116:23 151:4 167:24 220:16 223:25 225:3 <b>identified</b> 125:17 126:12 127:25 147:16 311:11 346:8 367:20 <b>identifies</b> 369:10 <b>identify</b> 134:11 148:11 220:20 235:10 236:24 237:7,14 248:19 268:7 297:8 <b>identifying</b> 28:24 <b>ill</b> 258:20 275:18 <b>illness</b> 263:8 264:18 275:21 309:1,3 <b>illuminate</b> 26:6 135:21,22	<b>illuminated</b> 35:24 <b>illuminates</b> 135:6 137:8 <b>immediate</b> 49:18 50:23 61:23 <b>immediately</b> 109:21 134:3 159:5 202:19 255:5 286:13 293:3 <b>imminent</b> 178:4 <b>immobilized</b> 63:1 <b>implicate</b> 152:24 <b>implications</b> 152:13 <b>impressions</b> 308:10 <b>improper</b> 100:19 307:22 366:3 <b>improve</b> 236:16 <b>impulse</b> 214:16 298:17 <b>impulses</b> 213:25 <b>inaccurate</b> 125:3 <b>inaccurately</b> 100:25 101:1 <b>inappropriate</b> 99:13,21 100:13 143:5 <b>incapacitate</b> 83:15 83:21 97:24 212:24 240:18,22 <b>incapacitation</b> 55:19 86:13,17,23 98:4 186:21 241:2 244:6,18,23 245:8 <b>inch</b> 92:6 <b>inches</b> 88:20 89:23 89:24 90:11,12 91:7,8,13,14,18 91:18,19 92:3,16 216:6,7 <b>incident</b> 4:15 8:1 13:24 15:14 18:13 19:19,21 20:2 64:17,20 66:4 76:6 77:25 92:22
--	---	---	---	--

95:16 122:20 124:23 165:22 169:17 205:10 209:9,10 210:1 236:23 237:11 238:6 282:3 284:13,19 <b>incidents</b> 205:25 <b>include</b> 76:17 102:3 102:22 108:22 243:24 360:22 <b>included</b> 93:15 337:6 <b>includes</b> 97:13 340:23 <b>including</b> 42:19 45:1 87:14,19 93:15 94:3 98:2 106:17 270:2 <b>incomplete</b> 170:11 <b>inconsistent</b> 165:11 <b>incorrect</b> 143:25 248:8 297:4 <b>increase</b> 93:14 101:20 214:9 230:20 <b>independent</b> 165:19 238:15 274:14 <b>indicate</b> 28:15 32:9 33:7 35:17 51:5 91:23 105:13,14 126:19 291:23 355:4 <b>indicated</b> 30:16 112:23 123:11 124:22 125:1 240:11 278:23 357:11,13 <b>indicates</b> 363:6 <b>indication</b> 114:12 <b>individual</b> 29:1 56:9 78:13 95:1,9 98:5 206:9 209:10 368:4 <b>individually</b> 1:5,12	1:13,16,18 5:7 335:23 <b>individuals</b> 94:12 94:21 102:1,2,21 120:21 240:7 363:21 367:13 <b>inflict</b> 187:11 192:22 193:5,10 <b>influence</b> 209:11,12 239:5,11,18,21 246:4 276:5 309:6 <b>information</b> 20:12 20:13,18,21 21:7 35:19 36:4 49:24 95:10 104:25 106:12,18 141:8 141:12 144:11 154:15 163:13 223:17 243:14 251:25 252:3 256:16,18 341:8 343:10 360:8 <b>infraction</b> 171:9 172:18 <b>inherently</b> 110:2 <b>initial</b> 56:4 60:7 77:11 162:5,25 178:25 179:1 <b>initially</b> 22:5 38:17 54:17 56:3,18 72:1 125:4,10,14 126:13 255:13 261:5 296:6 <b>injuries</b> 39:14 89:19 215:19 <b>injury</b> 83:22 84:3,6 90:6,20 94:4,25 98:1,12 101:21 109:14 119:15,24 219:8 227:6,13 239:12,15 287:6 <b>inquired</b> 46:4 <b>insert</b> 269:20 <b>inside</b> 35:12 <b>instance</b> 109:19 146:8 167:4	<b>instances</b> 205:23 <b>instructing</b> 349:25 350:11 <b>instruction</b> 196:9 202:23 212:13 <b>instructions</b> 96:24 117:9 149:8 150:7 154:15 163:10 165:12 212:10,25 230:16,23 232:8 232:17 348:7 <b>instructor</b> 4:9 77:18 79:11,18 145:20 155:12 157:5 221:4 <b>intend</b> 40:15 216:19 <b>intended</b> 122:12 289:12 355:13 <b>intending</b> 35:18 49:2 58:3 <b>intent</b> 37:18 100:21 109:5 329:9 <b>intention</b> 216:21 217:15 354:3,22 354:22,24 <b>intentionally</b> 219:14 <b>interact</b> 259:19 <b>interaction</b> 10:7 104:17 105:12 108:25 111:5 291:11 <b>interactions</b> 95:11 <b>interest</b> 194:25 195:15 371:10 <b>interested</b> 247:20 372:14 <b>interests</b> 194:15 <b>interfere</b> 125:24 <b>interior</b> 215:12 <b>interject</b> 98:16 <b>internal</b> 64:1 <b>interpret</b> 58:2 <b>interstate</b> 14:9,9 <b>intervention</b> 16:2	257:25 <b>intoxication</b> 102:6 104:22 238:25 <b>Intoxilyzer</b> 16:8 <b>investigate</b> 27:6 <b>investigating</b> 278:11 314:14 <b>investigation</b> 10:6 10:9,13,21 11:9 110:17 165:22 166:1,6 278:20 295:7 <b>Investigations</b> 10:5 10:18 <b>Investigative</b> 20:24 <b>involve</b> 98:12 <b>involved</b> 25:7 71:1 74:14 123:18 165:23 331:16 <b>involvement</b> 65:3 250:2,6 <b>involves</b> 98:2 <b>irrational</b> 209:13 210:5,11,13,16 261:11,17 262:3,7 262:20 263:4,7 264:17 320:13 <b>irrationally</b> 210:21 260:6,12,16,19 261:6,14 265:3,5 266:9,11 289:11 302:20,22 <b>irrelevant</b> 100:7,12 100:20 <b>issue</b> 247:15,16,17 262:16,18 263:17 366:1 <b>issued</b> 40:7 204:24 <b>issues</b> 35:5 244:11 258:7 259:14 <b>item</b> 227:18 <b>iteration</b> 56:6  <b>J</b> <b>jail</b> 12:15,18,20 160:22	<b>jailer</b> 12:23 <b>James</b> 1:4,5,8 5:5 9:1 57:11 <b>JANICE</b> 1:8 <b>January</b> 82:7 221:5 221:16 224:13 225:16 <b>jerk</b> 339:24 340:11 <b>job</b> 14:13 236:19 254:11 <b>JOHN</b> 3:3 <b>Johnny</b> 5:24 99:10 121:25 173:21 <b>johnspurlin@sp...</b> 3:5 <b>join</b> 17:25 135:18 137:1 150:13 170:22 177:6,25 186:10 187:25 188:19 190:4 191:13 216:13 226:4 240:20 241:14 243:12 246:7 253:6 260:14 262:23 263:11,20 270:6 287:21 289:25 301:3 320:17 322:7,24 333:12 339:21 356:4 <b>joined</b> 18:1 <b>JORDAN</b> 1:8 <b>Jr</b> 1:15,23 2:4 4:3 5:3 7:1,12 373:3 374:21 <b>judge</b> 100:23 349:12 <b>Judicial</b> 371:5 <b>July</b> 78:21 <b>jumped</b> 62:7 210:10 <b>June</b> 8:2 198:18 <b>justice</b> 17:5,7 <b>justify</b> 296:20  <b>K</b>
---	--	--	--	--

<b>keep</b> 56:12 70:24 122:2 181:17 185:12,21 265:12 288:25 291:15 301:6 307:4 318:24 324:8 362:9	<b>knock</b> 208:22 <b>knocked</b> 62:15 283:6,6 306:3 <b>know</b> 8:20 10:18 15:2,23 16:14 20:12 21:20 23:13 29:9 32:20 34:2 35:2,7,9,11,14 36:10,11 37:2,12 37:18,23 38:23 39:11,24 41:1,13 42:25,25 43:9 44:20 49:12,16 50:16 52:11 57:4 60:3,20 62:5,11 62:15 63:1 64:3,4 64:23 65:21 68:13 68:16,18 69:7,9 71:6,13 72:4,25 73:1,3 74:14 75:9 98:22 99:1 100:23 103:2,7,10 104:13 104:16,19,21 105:19 106:4 109:22 110:1,1,1 112:19,25 114:6 114:12,14,25 122:17 123:8 124:22 128:21 129:24,25 131:9 135:2 138:6 143:16 145:7,8 147:3,5 152:1,18 152:21 153:15,16 155:9,9,10 156:16 158:20 164:4 167:16 168:14 173:16,19 174:23 175:3,5,19 182:25 183:7 185:3 189:13,20,20 190:25 192:4,5 195:21 196:11 197:9 198:5,6 203:6,8,17 204:7 204:10,23,25	205:1,22 206:3 207:3,24 208:12 210:8 211:20 214:12,17,21,22 221:10 222:14 225:13 226:5,11 228:6,8,22 229:8 229:18 232:25 233:9,15 234:22 234:24 235:11 236:2 237:4,9,16 237:18,18 238:21 238:24 239:2 241:15 242:13,14 242:19,23,24 243:3,17 244:4,10 244:12,13 245:18 245:25 246:1,11 246:19 247:6,6,14 247:17 249:7,9 250:21 252:18,19 252:21 255:19 256:3 259:21 264:4,13 267:14 269:24 270:10,19 271:1,14 272:11 272:12 273:3 275:25 276:7,18 276:24 280:1,12 282:13 283:6,18 286:3 288:2 292:4 293:3 294:9 295:15,17,18,19 295:20 297:7,18 302:23 304:6,8 306:22 307:1 308:5,6,21 310:12 311:23,25 312:13 312:17,20,25 313:8,16 314:1,11 314:22,23 317:7 318:11 321:15 322:6,8,10 324:11 324:12 325:2,7,24 326:1 328:20 330:2,12 331:11	331:13,21 332:15 332:17 333:24 334:1,7,12,18 338:18 339:14,16 340:19 341:10 342:19,25 344:16 346:20 348:1,24 356:12 357:19 358:11,16,25 359:1,2,15 360:24 363:8 364:16,18 365:3,15,16,18,21 365:22 366:4,21 367:21 <b>knowing</b> 36:4 47:24 106:15,18 234:18 246:3 297:8 322:2 <b>knowledge</b> 76:5 78:19 79:17 80:3 82:8 95:17,20,23 111:3 112:16 169:19 196:7 235:19 236:9,9 373:4 <b>known</b> 176:25 367:14 <b>knows</b> 235:14	135:10 160:20 162:6,8 171:15 173:4 180:4 192:20 197:23 206:12 207:20 208:5 212:2 248:23 274:5 277:24 <b>lawful</b> 47:9 185:22 <b>lawyer</b> 196:3 <b>lawyers</b> 273:2 <b>laying</b> 309:19 314:16 315:2,5 326:14,16,25 <b>lead</b> 43:20 250:1,1 <b>leading</b> 43:18 45:1 <b>leads</b> 24:3 <b>lean-to</b> 33:24 34:1 34:5,7,20 248:7 248:10 292:23 <b>leaned</b> 30:23 31:16 250:7 <b>leaning</b> 248:7,8 249:11 292:17 <b>learn</b> 35:19 89:13 93:9 360:13 367:23 <b>learned</b> 86:25 87:5 87:10,15,21 88:2 88:15 93:18 94:5 94:15 95:3 101:22 102:10,17 105:22 106:16 108:9 <b>learning</b> 88:6 <b>leave</b> 89:10 316:20 <b>leaving</b> 355:10 <b>led</b> 26:5 249:24 260:18 261:5,13 263:4 264:19 278:17 <b>Lee</b> 3:15 <b>left</b> 11:25 14:21,23 22:22 26:6 61:13 65:17 81:20 83:17 93:3 101:14 232:21 234:18
--	--	---	--	--

244:20 246:2	179:18 180:5,12	<b>locations</b> 87:14	128:13 129:11	27:1,5,8,11,19,22
281:4,12 286:15	183:18	<b>locked</b> 55:2	292:11	28:7,10,14,19,22
303:4,10,14,14	<b>limitations</b> 180:21	<b>lockup</b> 86:24 92:15	<b>looking</b> 11:6 19:17	30:17 31:5,24
312:24 326:17,18	<b>limited</b> 86:24	<b>log</b> 4:19 64:1,8	24:20 27:24,25	32:4,10 33:8,12
326:25 332:10	<b>limp</b> 272:18 312:5	138:6 298:16,18	48:15 63:6 82:5	33:19,22 34:13,15
342:20 344:19	314:7,16 316:3	298:19	117:16 175:3	35:3,6,8,10,13,16
<b>legal</b> 5:17 76:25	318:19 319:6	<b>long</b> 11:16 12:18	227:7,8 337:10	36:24 37:5,12
249:14 254:8	322:19 338:19,22	52:19 69:20 122:2	355:5	38:5,8,11,13 39:3
371:7,9,11,13,15	346:18 347:10	130:21 138:2	<b>looks</b> 78:21,24	39:16 40:8,11,17
371:18	<b>line</b> 28:11,15 30:25	162:13 179:15	82:12 168:25	41:2,6,12,16 42:4
<b>legs</b> 87:13 332:16	194:18 215:10	180:10,19 181:1,2	171:22 203:19	42:11,14,17,22
332:20 347:20	216:18 217:1	181:8 182:5	303:16 333:13	43:10,14 46:23
<b>length</b> 53:1	298:24 360:5	201:16 259:22	<b>lose</b> 111:24 241:3	48:7,19,23 49:4
<b>lengthy</b> 202:10	367:15 373:6	269:5 283:17	242:6	49:25 50:6,25
<b>Lenox</b> 12:1,2,25	374:2	284:1 291:10,13	<b>lot</b> 28:4,5 30:22,24	51:4 52:10,13,15
13:10,15 159:10	<b>list</b> 102:20	305:6 312:11	71:14,15 159:3	53:5,9,16,19 54:2
165:5 205:15	<b>listed</b> 77:6 104:5	324:8,12 334:4	193:22,23 196:17	54:5,8,11,21 55:6
274:8	106:3 155:7,12	335:4,5 345:19	246:11,13,23	55:21 56:10,14
<b>lesser</b> 212:6	<b>listen</b> 126:6 337:12	346:2 357:8,9	259:17 285:9	57:12,18 58:22
<b>let's</b> 76:21 121:5	<b>listening</b> 252:25	359:16	325:14 360:2	59:9 60:25 61:18
145:12 153:10	362:24	<b>longer</b> 73:2 305:19	<b>Love</b> 3:7	62:1,11,20 63:16
158:8,10 168:19	<b>litigation</b> 371:20	305:23 312:14	<b>lower</b> 217:3,22	64:3,19 65:5,8,19
173:9 185:19,21	<b>littering</b> 170:6	<b>look</b> 22:22 24:11,25	218:3 219:10	65:22 66:5,15
188:7 190:20	<b>little</b> 12:16 36:15	25:2 28:9 31:4	354:6	67:1,14,18,23
199:25 205:25	53:8 218:22 225:7	33:11 117:20,23	<b>Lowndes</b> 160:12	68:6,24 69:15,19
229:1,13 277:22	324:21,22,23	117:24 122:16	<b>lunch</b> 121:5,9	69:23 70:4,7,10
291:15,16 364:12	325:9,10,12,14,15	123:1 128:15,22		71:3 72:14 74:12
<b>lethal</b> 109:5,8,8	357:7 360:9	143:13 145:12,13	<b>M</b>	74:18 75:7 76:8
206:15,18,23,24	<b>live</b> 159:1,3,7,9,15	147:12,15 149:3	<b>M26/X26</b> 76:23	76:10,15 77:5,13
206:25	159:18,21 160:8	151:10 155:21	77:15 145:17	77:24 78:2,7,14
<b>level</b> 16:24 109:23	160:10 161:10,12	157:4 168:21	<b>ma'am</b> 7:11,16,24	78:22 79:1,4,7,10
<b>levels</b> 86:22	161:17,24	169:13 173:10	8:3,5,8,14,17,24	79:19,22,25 80:5
<b>lieutenant</b> 1:14	<b>lives</b> 159:10 161:13	184:11,15 185:24	9:4,10 10:8,11,20	80:8,10,12,16,23
65:12 74:20	161:18,25	198:14,20 203:19	10:25 11:8,12,15	82:2,11,16 83:1,4
<b>life</b> 109:6 205:14	<b>load</b> 318:8	215:9 216:17	12:13,15 13:2,5	83:9,13,25 84:4,7
<b>lift</b> 211:12 313:20	<b>loaded</b> 271:12	217:1 218:19	13:19,25 14:16	85:7 86:1,10,15
<b>lifted</b> 339:18	311:24 317:15,22	224:10 228:24	15:1,4,10,15,18	87:7,23 88:1,3,8
<b>light</b> 137:10	318:4,12 321:10	229:20 230:8	15:21,25 16:7,10	88:12,17 89:4,6
<b>lighting</b> 26:20	321:23 322:4,10	261:10 291:15,16	16:18,22 17:6,12	89:12 91:3,11,20
<b>lights</b> 26:5,5 248:25	347:17 348:2	291:17 298:22	17:22 18:4,11	92:4,8,17,24
<b>likelihood</b> 87:4	<b>localized</b> 87:25	303:25 321:13	19:1,3,16,22,24	93:12,20 94:1,8
97:25 98:11	<b>locate</b> 257:13	328:7 344:5	20:3,7,15,25 21:4	94:23 95:5,19,22
<b>liking</b> 13:11,14	<b>located</b> 34:14	352:25 357:18	21:8,22 22:9,21	95:25 96:5,15
<b>limit</b> 139:15 179:24	<b>location</b> 25:5 31:2	366:7,8	23:1,4,12,22 24:6	97:5 98:9,13
181:5	47:5 73:3 90:25	<b>looked</b> 48:11 99:25	24:15,19,24 25:1	101:24 102:12,19
<b>limitation</b> 179:12	369:11	100:1 122:18	25:18 26:16,19	103:14 104:11,18



104:24 105:2,7,24 106:2,6,11,14,22 107:6,9,11,13,15 107:17,19,23 108:5,8,19,23 109:9 111:9,12,20 111:24 112:3,17 113:2,14,17 114:4 114:7 115:18 117:1,6 118:16,21 208:20 359:17 361:8 362:16,23 367:6 368:18 <b>machine</b> 301:16 <b>Madam</b> 29:10 <b>Magna</b> 5:16 371:7 371:9,11,13,15,18 <b>maintain</b> 87:12 <b>major</b> 79:13,14,18 79:20 103:17,21 139:22 141:8 145:1 146:1,10 148:22 150:10 162:20 163:25 164:18,25 165:13 165:16 181:8,20 181:21,22 183:17 199:5,16 201:19 211:16 223:3 231:18,21 232:23 236:7,12 238:19 319:24 320:6 350:21 <b>majority</b> 258:8 345:22,23 <b>making</b> 64:25 68:10 131:1 228:4 228:5 241:23 242:1 361:25 <b>mama</b> 159:9 <b>man</b> 185:3 221:23 254:14,19 332:1,4 350:19 <b>mandate</b> 97:15 <b>mandated</b> 149:14 <b>manipulate</b> 54:13	<b>manner</b> 75:4 180:3 <b>mannerisms</b> 291:8 <b>manually</b> 130:5,6,7 <b>manufacturer</b> 85:13 <b>March</b> 11:21 98:20 101:11 117:9 118:3 154:13 366:11 <b>mark</b> 19:8 22:10 23:5 28:12 29:3 29:15 116:16 292:9 295:23,23 304:23,23 <b>marked</b> 19:10,14 22:12 29:24 30:10 63:18 75:21 78:9 81:5 88:23 96:7 116:22 151:3 153:11,19 167:23 168:4,8 216:1 220:15,19 223:24 224:3 225:2,5 <b>married</b> 160:6,6 <b>Mary</b> 161:22 <b>mass</b> 219:10 <b>material</b> 146:3 233:19 <b>materials</b> 98:19 146:22 149:9,24 150:8 156:11 165:1,12,18 202:24 227:19,24 230:17 231:24 232:18 233:12,22 348:7 <b>matter</b> 5:3 7:19,23 8:1 367:2 <b>matters</b> 305:5,6 <b>McBrayer</b> 1:4,5,6,6 1:7,8,9 5:6 9:1,8 10:7 11:7,11 15:14 18:13 25:4 25:6 30:21,23 31:1,11,13 35:2 36:6,18 39:15,24	40:10 42:10,16 46:21 49:24 51:3 51:7,12,25 52:25 53:8,18 54:6,15 55:25 56:18,24 58:8,13 60:10,16 61:14 62:19 66:4 69:3,4,6,10,14,17 69:21 71:2,5,9 72:2,22 73:25 74:6 75:1,10 76:7 76:18 77:2 89:2 95:17 104:10,13 105:5,13 106:8,19 107:1 108:1 109:1 109:21,22 110:11 110:24 111:6,22 112:9,23 113:3 114:3,20 115:16 124:13,22,24,24 131:18 137:18,23 138:3 151:20 169:18 178:12,16 179:6 189:24 190:9 205:2 206:2 210:2 214:24 222:8 237:11,24 238:6 239:4 242:23 246:5 248:1 249:25 252:14 253:8 254:12 259:23 260:11,21 265:22 266:16 267:5 268:4,6 276:25 277:5 280:21 307:7 308:1,4,5 308:11,25 311:9 311:21 321:9 333:14 341:12 346:4 355:7 373:2 <b>McBrayer's</b> 27:2 69:25 70:14 73:3 74:8 92:21 106:4 109:6,23 110:18 113:8,16 125:11	125:14 310:4 367:22 <b>mean</b> 10:14 15:5 21:13 24:10 25:9 37:15,16 44:5 52:11 63:15 64:10 65:11 86:16 88:18 99:22 105:15,24 106:25,25 108:11 115:1 118:25 122:19,23 129:7 129:15 133:15 137:2,2,3,7 140:22 141:11 147:12 152:10,20 157:16 159:2,5 163:3 167:1,2,10 169:7 170:10,23 172:6,15 173:2,8 174:17 175:11,15 175:16 182:12 184:4 186:8 187:18 188:6 189:6 190:25 193:22,25 194:17 196:1,23,24 201:7 202:10 204:6 206:19 208:2,7,10 210:22,23 211:18 213:3 214:21 220:3,10 224:25 226:5 228:1 233:15 234:21 236:1 239:14,15 240:3,8 241:10,22 243:5 244:10,19 245:2 246:12,13 246:23 247:1,4,4 250:20 257:4,5 258:5,12 259:18 259:18,25 261:9 264:3,13,18 267:22 268:2 269:13 272:1,2,4 272:8,12 277:18 277:20 285:9	286:11 288:1 290:10 293:5,7 294:12,18 298:15 301:9 309:17 310:12 315:11,15 316:24 317:18 319:8 324:23 325:9,24 328:13 329:5 330:2,8 331:2,3,15,19 334:16 336:16 337:3,5,20 339:12 339:13 344:24 352:15 353:6 358:20 363:5 365:8 369:9 <b>meaning</b> 47:15 245:23 324:22 355:10 <b>means</b> 15:3 33:10 37:16 68:18 109:6 123:8,13 132:22 189:13 206:24 220:4,6,7,11 264:4,14 274:9 275:13,16,18,20 275:23 293:9 315:17 324:11 325:2,10 338:13 <b>meant</b> 231:10,19 234:19 238:20 242:10 245:17 260:8 274:15,18 275:25 339:17 341:1 <b>measure</b> 310:7 311:15 324:6,9 358:20,21 <b>medic</b> 93:24 <b>medical</b> 95:18 96:2 103:8,11 105:19 107:5 111:8,11 113:13 114:13 214:17 233:5 246:13 266:13,16 266:19 267:8
--	--	---	--	---

282:10,14,16 318:14,22 319:16 319:20 320:2 321:4,9,18,24 322:3,9,14 328:19 341:3,4 346:12,15 346:20 347:6 367:22 <b>medically</b> 93:24 94:12,22 320:9,12 320:23 322:21 <b>medication</b> 268:23 275:21 <b>medium</b> 81:12,16 121:14,19 218:9 218:14 323:14,19 <b>mediums</b> 369:21 <b>meeting</b> 164:14 <b>memory</b> 41:10 132:2 166:7 <b>mental</b> 35:4 95:23 107:5 258:7 259:14 262:11,16 262:18 263:8,17 264:18 265:23 266:2 267:8 275:20 309:1,3 321:1 343:8,15,22 343:24 346:17 347:11 <b>mentally</b> 107:10 258:20 275:18 <b>mention</b> 56:11 <b>mentioned</b> 39:1 245:25 <b>mentions</b> 62:9 <b>merely</b> 171:8 <b>messed</b> 303:5 <b>met</b> 7:17 24:8 25:22 25:24 26:22 316:12 <b>metabolic</b> 93:10 101:16,20 102:14 102:15 120:19 <b>metabolically</b> 102:14	<b>metal</b> 28:4 32:6 <b>method</b> 247:8,11 <b>methods</b> 246:20 259:6 <b>mic</b> 359:22 <b>Michaela</b> 1:3 5:4 <b>Michelle</b> 2:14 5:18 371:24 372:5,21 <b>middle</b> 1:1 5:10 89:17 281:4 <b>midline</b> 89:24 90:13 91:13 <b>mile</b> 173:21 <b>miles</b> 275:24 <b>military</b> 17:20,25 18:1,2,6,8,11 <b>Mill</b> 3:4 <b>Milligan</b> 161:23 <b>mind</b> 29:11 31:4 71:20 75:16 177:21,24 210:16 215:2 232:21 260:10 263:21,22 268:11 272:1,2,5 273:19 279:9,15 304:24 305:4 <b>mine</b> 154:10 189:17 324:25 359:25 <b>Minimize</b> 185:10 <b>minimum</b> 88:14 <b>minute</b> 141:2 203:12 284:24,25 324:16 325:8,9 326:8 345:15 349:4,4 357:21 <b>minutes</b> 114:19 115:3 190:13 214:15,15 309:20 325:16,20 346:16 <b>Miranda</b> 277:4 <b>misdeemeanor</b> 172:25 173:17 <b>misdeemeanors</b> 170:8,19 172:1 <b>misrepresent</b> 143:10 144:3	181:16 <b>misrepresenting</b> 365:6 <b>Misrepresents</b> 143:2,4 <b>missing</b> 251:1 <b>misspeak</b> 280:7 <b>misstate</b> 229:23 230:6 <b>Misstates</b> 143:3 147:23 <b>mistaken</b> 33:24 34:4 <b>mistakes</b> 136:6 235:6 <b>MO</b> 365:8 <b>mode</b> 68:23 73:8 97:23 132:14 <b>model</b> 15:11,13 80:9 205:2 <b>models</b> 80:11 <b>mom</b> 160:11 <b>moment</b> 73:16 96:11,13 117:15 134:8 154:5 <b>months</b> 13:12 217:11 <b>morning</b> 7:6,7 26:17 191:1 215:25 286:12 351:14 <b>Morris</b> 3:15 <b>mother</b> 1:7 159:8 161:11 <b>mother's</b> 161:22 <b>mothers</b> 161:9 <b>motor</b> 331:16 <b>mouth</b> 105:5,9,20 105:23 274:9,12 274:25 276:9,16 276:22 285:3,16 315:7,10 327:6,12 327:16,19 336:3,8 368:9 <b>move</b> 34:8 54:16 70:20 72:23 73:1	126:9,10 345:7,14 349:14 <b>moved</b> 14:17,19 29:8 <b>movements</b> 303:18 <b>moving</b> 111:1 <b>multiple</b> 21:18 24:22 329:10 350:18 <b>murder</b> 174:25 <b>murders</b> 174:13 <b>muscle</b> 54:14 86:20 87:13 92:15 <b>muscles</b> 54:14 55:1 55:2 62:25 86:19 241:3 242:7 <b>muscularly</b> 212:24 <hr/> <b>N</b> <b>N</b> 3:11 4:1 <b>name</b> 7:8,11,18 121:24 154:24 159:11,13 160:7 161:15,19,20,22 207:5 254:17 331:24 347:21,21 <b>name's</b> 155:10 <b>named</b> 6:4 7:19,22 <b>names</b> 155:7 160:4 <b>Narcen</b> 268:21,22 268:23 270:3 <b>narrow</b> 23:9 <b>nasal</b> 269:17,17 <b>nasally</b> 269:16 <b>National</b> 17:24 <b>natural</b> 1:7 <b>nature</b> 14:7 21:12 21:13,18 37:19 39:6 52:2 60:20 172:11 173:4 194:15 195:14 208:4,13 211:22 213:9 289:7 297:7 <b>near</b> 35:12 292:23 315:10 327:12 <b>necessarily</b> 131:22	136:8 137:3 155:18 174:17 207:23 241:22 273:7 301:25 314:21 322:16 <b>necessary</b> 166:18 166:24 167:2 179:9 293:8 <b>necessitated</b> 318:11 318:21 <b>neck</b> 70:1,2,8,14,18 70:23 125:11,16 125:17 126:14,19 126:20,24 127:2,9 127:19 189:25 191:16,20 192:8 280:5 326:23 327:1 330:17,19 332:12,13 344:9 345:12 <b>need</b> 8:19 14:12 35:15 81:7 122:4 125:23 126:15 135:15 136:3,23 153:3 158:5 168:21 171:16 172:7 173:4,20 184:10 194:14 195:5 196:10,11 211:5,9,11 212:1 214:17 225:12 229:22 236:4,12 253:23,23 254:11 258:12 265:3,9 267:18 268:3 270:16 282:19 294:18 314:12 318:14 319:16,20 321:18 322:8 329:16 346:15 359:20 369:11 370:10,19 <b>needed</b> 35:14 111:11 137:10 181:10,10 184:15 196:21 207:25
--	--	--	--	--

227:18 232:20	19:8,12 22:10,14	177:6,25 178:24	365:2,20,23 366:5	373:5
266:18 267:7	29:3,5,10,13,17	180:8,16,25	366:20 367:1,3,19	<b>notes</b> 202:14
278:21,22 284:22	29:20 30:1,7,11	183:19 184:3	368:1,8,19 369:17	<b>notice</b> 125:13
314:9 317:15	31:6,9 34:11 38:1	185:25 186:10,17	370:2,5	<b>noticed</b> 99:1 105:4
320:12,23 321:1,4	43:17,20 44:1,4,9	187:25 188:19	<b>nickname's</b> 7:14	124:19 368:10
321:9,24 322:3	44:11,13,24 45:4	190:4 191:13	<b>nicknames</b> 7:13	<b>number</b> 4:8,14 5:2
346:20	45:6,8,12,19,23	199:9 202:4 204:4	<b>night</b> 18:21 19:5,7	27:25 64:4 65:18
<b>needs</b> 39:8 196:22	46:1,6,10,16,19	208:17 214:11,20	129:21 130:8	65:18,21 68:4
258:13 267:11,12	48:1,9,25 49:5,22	215:25 216:13	166:4 270:8	79:5 81:12,16
320:1,8 322:14,21	50:11 53:6,12	220:22 221:3,12	272:22 273:19	93:23 109:22
346:4	57:22 59:6,10,15	223:16 224:10	274:17 282:2	121:14,19 133:1
<b>negative</b> 214:2	59:24 60:21 61:5	225:10 226:4	313:11 316:3	140:20 178:1
<b>negatively</b> 335:16	61:12 62:2 63:20	227:9 228:2,20	321:16,17,23	179:12,18 180:5,5
<b>neither</b> 144:5	64:14,16 68:12	229:6,8,12,15,23	334:7,12,15,19	180:12,13,21,21
253:25 254:3	69:1 73:23 75:20	230:1,4 231:5,25	341:22 342:14	182:4 183:3,4
257:7	75:23 76:16 78:8	233:1,14,17,21	348:20 350:8	185:1,10 203:7
<b>neuromuscular</b>	78:11 80:24 81:4	234:3,15 235:6	351:10 355:23	204:7 207:17
55:19 86:13,17,22	81:7,19 85:17,22	238:10 240:20	<b>nine</b> 13:12 65:16	218:9,14 258:5
186:20 241:2	86:3,11 88:22,25	241:14,21 243:12	203:22 229:20	290:11 298:24,24
244:6,17,23 245:8	91:5,22 92:2,10	243:19 244:8,25	298:14 364:8,21	319:5 323:14,19
<b>neutralize</b> 108:13	92:19,25 93:22	245:11 246:7	<b>ninth</b> 298:22	339:12
<b>never</b> 12:23 18:10	94:9,19 95:7,15	249:17 253:6	<b>NMI</b> 55:20,22 73:9	<b>numbered</b> 29:4
46:12 54:15 70:2	96:6,9 99:1,23	260:14 262:23	86:23 87:4,9,20	82:18 84:15 86:4
139:18,20,22	100:6,24 101:5,8	263:11,20 266:22	87:25 88:21	86:12 88:4 93:3
164:14 182:19,19	101:13 104:1	270:6 278:24	<b>Nodding</b> 9:15	171:22
182:20 187:3	106:23 107:24	285:11 287:21	113:19 134:1	<b>numbers</b> 29:1
190:8 191:21,23	109:18 115:12,19	289:25 298:3,18	162:9 186:14	66:16 131:2
196:21 204:17	116:1,8,15,20,24	298:23 299:13,20	295:6	151:12,13 225:7
205:9 209:17	119:2,5,9,11	301:3,24 302:18	<b>noise</b> 242:4	<b>numerous</b> 137:8
212:12 229:5	121:1 132:18	305:13 306:19,25	<b>non-forcible</b> 172:1	210:22 288:24
231:9 248:2,4,23	135:18,23 136:6	307:4 308:8,14,16	<b>normal</b> 324:20	349:9,15
253:20 254:1,1,16	137:1,24 138:4	308:19 309:22	325:23,25	
254:18,21,23	139:3 141:5,10,15	320:17 322:7,24	<b>normally</b> 55:9	<b>O</b>
255:1,4 262:25,25	142:5,10,16,25	323:10 333:12	324:24 325:2,7	<b>O</b> 51:11
263:7 265:5	143:3 144:15	335:13 337:1,25	<b>North</b> 161:7,18,25	<b>O.C.G.A</b> 371:10,14
267:10 276:10	145:5 146:6,9	339:21 343:17,23	<b>Nos</b> 30:9	<b>oath</b> 99:19 100:15
277:4 309:2	147:4,11,18,20,23	348:10,15 351:1	<b>nose</b> 269:20,21	148:10
319:11 320:16	148:5 150:2,13	352:3,13 353:7	281:5 327:20	<b>obey</b> 141:22 142:9
339:5,10 342:13	151:9,12 153:11	355:18 356:4,20	328:10	147:8 149:4 150:1
357:6,11,13	153:16,18 154:3,5	356:22 357:25	<b>notable</b> 129:14	156:10 227:24
366:17	156:13 157:1,15	358:4,8,13 359:5	<b>notably</b> 120:8	228:16 230:13,23
<b>new</b> 59:2 60:19	157:19 158:10	359:7,9,12,14,24	126:17	232:17
225:11	163:16,22 164:1	360:1,12,21 361:3	<b>Notary</b> 374:24	<b>object</b> 37:25 43:16
<b>Nguyen</b> 3:10 4:4,5	167:13 168:8,11	361:11,16,22	<b>note</b> 9:24 56:3	45:16 46:11 47:18
5:22,22 7:5,18	168:21 169:1,3,5	362:1,6,9,12	98:24 346:7	48:8,24 49:3,21
9:14,22,25 10:2,3	170:22 171:7	363:16 364:14,23	<b>noted</b> 99:24 125:7	50:9 53:4,10

57:21 59:5,8,13	240:1,19 241:13	353:9 356:3,20	111:11 187:9	1:18 5:7 89:1
59:22 60:13 61:25	241:21 242:8	357:2,10 358:4,8	305:11	183:14 372:15
68:9,25 73:22	243:11 244:7,8,25	358:9 360:11,20	<b>obvious</b> 325:11	<b>oh</b> 33:11 34:10
76:14 85:15,20	245:1,11,12 246:6	361:1,9,14,20,23	<b>obviously</b> 75:10	44:16 59:25 120:6
86:2,8,8 91:2,21	249:17,18 253:5	363:14 367:16,24	106:8 221:7	127:10 132:5
92:1,9,18,23	254:6 256:25	368:6,12,17	250:21 251:20	151:12 209:1
93:21 94:7,18	258:14 259:4,7,24	<b>objected</b> 308:17	322:8	252:7 329:25
95:6,14 96:4	260:13 261:21	347:1	<b>OC</b> 108:2,6,7,9,11	359:24 364:1,14
103:23 106:21	262:12,22 263:10	<b>objecting</b> 317:2	108:17 272:21	365:7,11 369:5
107:22 109:16	263:19 264:6,21	362:3	273:18,21	370:3
126:2 135:17	266:3 268:9 270:4	<b>objection</b> 43:17	<b>occumant</b> 27:12	<b>okay</b> 8:6,13,25
136:5,6,25 137:24	271:8,13,18 272:6	44:2,6,8 45:24	<b>occupant</b> 27:12	10:21 11:24 12:4
139:3 141:5,6,10	272:10 275:8	46:4,5,9,13,14	<b>occur</b> 241:2	12:10,22 14:3,24
142:5,10,11,16,17	276:11,17 278:6	135:23 138:4	<b>occurred</b> 99:16	15:7 16:11 18:12
142:25 143:1,7	279:18 280:20	143:7 254:5	100:21 124:23	18:25 19:23,25
144:14,15 145:4,5	281:21 282:4,24	260:20 364:4	250:20 301:20	20:23 21:20,25
146:6 147:4,10,11	285:11 286:18,25	<b>objections</b> 9:12	<b>October</b> 14:17	23:9,16,23 24:11
147:20 148:5	287:18 289:17,24	44:22 45:1 163:22	96:24 117:13	24:20 25:17,19,24
149:16 150:2,12	290:21 291:2	180:16 348:15	118:4 196:5	26:13,15 27:2,16
156:13,14 157:15	293:12,17 294:16	361:23 362:9	372:17	27:23 28:1,6,11
163:16 164:1	295:3 297:14	<b>objective</b> 166:15	<b>off-the-record</b>	29:21 30:8,12,20
166:8,13,19,25	299:13,19,20	174:8	99:16	30:25 32:9,17
170:10,14,21	300:5,8 301:1,23	<b>objectively</b> 171:13	<b>offense</b> 11:10	33:6,11,20 40:25
171:6,7,18 172:21	301:24 302:18	175:7,17 185:18	170:13	42:8 44:17 46:1
173:7 174:3,16	303:20 305:2,13	<b>objectives</b> 185:22	<b>offensively</b> 295:21	46:16,18,20 51:13
175:10 177:5,12	305:14 306:18	225:20,21	<b>offered</b> 254:12	52:22 55:22 57:16
177:23 178:24	307:18 309:21,22	<b>obligation</b> 50:21	<b>offering</b> 254:10	63:4 65:23 66:16
179:22 180:8,15	310:1,17,25 311:6	<b>observation</b> 73:24	<b>office</b> 10:22 11:22	68:4,17,20 71:19
180:23,25 183:19	312:16 313:7,15	74:1 280:8	12:1,9,11 13:7,9	82:3,17 84:14
184:3,5 185:20	313:21 314:19	<b>observations</b> 48:20	65:14 78:5 84:23	85:5 90:5 91:6
186:9 187:2,13,24	315:22 316:6,21	62:19 92:21 352:6	85:6,11 111:10	96:10,12 101:14
188:18 189:4,15	317:4,17,23 318:6	<b>observe</b> 39:15 71:8	164:10 167:11	101:19 103:17
190:3,15 191:11	318:16,23 319:18	111:7 285:15	168:7 169:11	111:21 112:23
192:3,10,23	320:3,15 321:12	327:25	198:10 269:7	114:24 115:3
193:17,21 194:22	322:5,15,22 325:1	<b>observed</b> 105:9,12	<b>officer</b> 4:20 13:18	116:21 117:4,15
195:11,25 199:9	327:10 328:12	113:12 129:2	37:15 78:13 106:1	117:25 118:6,11
204:4 212:19	330:1,18,23 331:4	131:17 261:5,13	167:20 186:25	118:17 119:7,12
214:11,19,20	331:10,14 333:11	263:4 274:12	197:3 208:5	120:6,7,12,17
216:12 222:9	334:9 335:7,13	285:6,8,9,14	248:19,24 290:13	122:15,20 123:4,7
223:21 226:3	337:1,25 338:1,7	286:5	290:13 316:25	124:2,10,15 126:8
228:2,3,19,20	338:16 339:20	<b>observes</b> 130:22	<b>officers</b> 112:8	127:5,21,24
229:6,7 231:25	340:24 343:17,18	<b>observing</b> 40:3	138:16 336:6,14	128:15,17 129:2
233:14 234:3,15	343:23 345:16	<b>obstructing</b> 295:7	347:16	129:24 130:1,4,7
234:20 235:5,6,7	346:22 347:13	<b>obstruction</b> 277:19	<b>officers'</b> 138:18,22	131:1,5,13,20
236:20 237:3	348:10,23 351:1	277:23	<b>offices</b> 371:12	132:17 133:15,18
238:10 239:6	352:3,12,13 353:7	<b>obtain</b> 17:2,8 88:7	<b>official</b> 1:12,14,16	134:9,21,25 136:2

136:11,19,22	201:25 202:4,13	280:5,10,17	345:10,13,25	248:2,5 254:16,18
137:5 138:12,21	202:19,24 203:6	281:24 282:7,10	346:14 347:9	254:21,24 255:1,4
139:18,22,24	204:13 205:14,21	282:23 283:4	348:3,20 351:13	281:17 367:23
140:7,12,21 141:1	206:1,21 207:3,12	284:6,12,17,22	351:16,19 352:6	<b>opposed</b> 44:6 58:21
141:14 144:25	207:15 208:16	285:1,6,13,15	352:10,19 353:14	60:12 109:8,20
145:25 146:3,19	209:2,4,8 210:4	286:4,7,10 287:3	354:7,9,16 355:3	199:14
147:1,7 149:2,11	210:15,19,25	287:8 288:5	355:6,8,10,12,18	<b>optimal</b> 88:14
149:20 150:5,16	211:7,15 212:3,10	289:10,14,21	355:25 356:15	213:17 241:1,7,10
150:18,22,24	212:13,19 213:11	290:7,12,19 291:5	357:16,21,25	242:6 245:8
153:25 154:3	213:18,24 215:4,8	291:10,15,21	359:3 360:2 362:8	<b>option</b> 50:24
155:12,21 156:22	215:15,22 216:17	292:2 293:3,21	362:13 363:11	106:20 352:17
156:25 157:13,19	216:25 218:5	294:24 295:8,22	365:14 366:20	<b>options</b> 87:19 97:25
158:4,13 159:4,11	219:24 220:6	296:1,9,23 297:4	367:11,20 368:2	<b>orange</b> 83:16
159:13,21 160:10	221:7,9,20 223:8	297:11,22,22	369:7,9,13,15	<b>order</b> 29:6,17 50:14
160:17 161:2,6,8	224:2,21 225:1,5	298:3,10 299:11	370:18,20	59:20 88:20 97:14
161:12,14,21	227:2,12,22	300:2 301:12,19	<b>old</b> 31:7 151:23	247:16 370:4
162:5,13,18,22,25	228:11,24 229:3	301:22 302:8,15	<b>Omega</b> 12:5 13:15	<b>ordering</b> 370:1
163:6,9,13,20	231:1,4,9 232:5	302:25 303:8,15	13:16 165:5	<b>orders</b> 47:9 84:17
164:4,9,14 165:4	232:16 233:18	303:18,25 304:2,9	205:15 274:8	210:7 369:25
165:10,16,25	235:25 236:16,22	304:14,20 305:25	<b>once</b> 23:17 40:2	<b>Organization</b>
166:3,11,17,23	237:7,23 238:1,4	307:9 308:7,24	68:21 73:1 74:7	103:15
167:16 169:1,20	238:14 239:3,10	309:8,19 310:3,10	106:19 110:11	<b>orient</b> 22:25
171:11,21 172:19	239:22 240:6,14	310:20,23 311:12	132:19 192:16	<b>originally</b> 12:10
173:2,8,19,24	242:12,17 243:4	311:20,23 312:2,6	193:11 208:11	61:14
174:6,22 175:2,21	243:16,23 244:16	312:14,24 313:3	304:4,5,18 351:21	<b>outcome</b> 11:1
176:4,11,19 177:3	244:20 245:6,16	314:3,9,16,25	<b>one's</b> 29:9 150:16	372:14
177:10,19 178:8	246:10,14 248:6	315:14 316:1,2,9	185:5 218:23	<b>outdoor</b> 273:5
178:11,22 179:6	250:20 251:9,14	316:19 317:10	<b>one-fourth</b> 89:24	<b>outline</b> 115:4
179:11,17 180:1	251:16,17,22	318:14 319:4,5,12	90:15 91:13	<b>outside</b> 238:16
180:10 182:3	252:9,16 253:24	320:12,25 321:7	<b>one-fourth-inch</b>	273:11
183:1,12,16,22	254:14 255:11,16	321:14,16 322:13	90:1,15	<b>overall</b> 38:23 173:3
185:12,24 186:3	255:21,24 256:13	323:12 324:4,6,11	<b>one-sixteenth</b> 89:25	<b>overexerted</b> 107:18
186:23 187:8,17	257:7,24 260:9,18	325:14,16,22	90:13	<b>overexertion</b> 102:7
187:20 188:5,7,9	260:24 261:2	326:22 327:17	<b>one-sixteenth-inch</b>	106:7,13
188:14 189:1,12	263:9,16 264:7	328:2,9,17,25	89:25 90:14	<b>overlap</b> 154:10
189:19,23 190:8	265:2,6,8,11	329:8 330:5,10,13	<b>one-third</b> 96:22	<b>overriding</b> 171:11
190:12,24 191:5,9	266:12 267:10,14	330:21,25 331:3,7	117:7	
191:22 192:7,16	268:6,14 270:15	331:18,22 332:14	<b>ones</b> 11:19 65:15	<b>P</b>
192:20 193:8,11	271:3,6,24 272:8	332:22 333:3,16	99:15 118:5	<b>P</b> 373:1 374:1
193:15 195:1,18	272:21 273:8,13	333:21 334:18,22	151:21 312:1	<b>p.m</b> 2:7 19:7,7
195:22 196:3,9,14	273:15,18,22	334:22 335:1,17	<b>online</b> 158:23	121:20 370:22
196:25 197:8,23	274:3,11,14,17,20	335:24 336:20,25	<b>open</b> 273:5 281:9	<b>pace</b> 13:14
198:8,20,24 199:7	275:12 276:2,24	337:3,5,9,12	<b>opinion</b> 362:7	<b>pacing</b> 210:6
199:17,22,25	276:24 277:4,22	340:22 341:12,24	<b>opioids</b> 268:24	<b>page</b> 4:2,8,14 24:20
200:14,21 201:2	278:2,9,13,16,19	342:12,16,25	<b>opportunity</b> 49:23	24:21 30:2 57:9
201:10,16,19,22	278:23 279:3,22	343:3 344:5,7	50:4 237:24 238:2	65:16 78:17,23



82:5,17,18 83:10 84:8,14,15 86:4,4 86:12 88:4,4,13 89:3,7,17,17 93:4 93:23 97:6,21 98:14 101:15 117:8,16,17 120:5 120:13,13,18 123:15 146:13 149:2 155:21 157:2,4 169:13 171:23 185:25 186:1 198:21 203:19 215:8,9,10 216:17 218:21 221:20 222:15 225:7,9,17 243:22 298:14,22 363:20 363:25 364:1 367:4 373:6 374:2 <b>pages</b> 93:2 171:22 227:3 372:9 <b>paid</b> 118:6 <b>pain</b> 73:19 87:25 186:18 187:1,11 187:15,23 192:22 193:5,10 339:14 340:1 362:18 <b>painful</b> 352:1 <b>pants</b> 55:1 <b>paper</b> 68:19 118:12 147:13 156:16 <b>papers</b> 14:6,7 142:3 <b>paperwork</b> 150:25 <b>paragraph</b> 76:20 76:22 77:14 90:6 90:10,19 96:23 97:21 101:16,25 120:13,14,18,20 120:23 363:20,24 366:23 367:5,8,8 368:3 <b>paragraphs</b> 90:24 <b>pardon</b> 5:13 <b>paren</b> 89:18 <b>parenthesis</b> 219:10	219:15 <b>parents</b> 159:7 <b>parked</b> 34:6 <b>Parker</b> 347:22 <b>part</b> 12:6,21 13:16 16:2,11,16 34:4 80:13,21 81:25 96:19 98:18 100:7 140:23 145:6 150:19 174:6 196:22 200:8,10 226:1,14 228:12 240:14 254:11 280:1 312:20 344:11,12 345:20 353:24 <b>participate</b> 10:9 <b>participated</b> 200:21 <b>participating</b> 82:23 83:3 <b>particular</b> 131:20 205:2 275:16 <b>particularly</b> 87:13 102:1,21 120:20 235:2 239:12 363:21 <b>parties</b> 5:20 371:19 <b>partner</b> 19:2 <b>party</b> 160:24 257:13 371:16,19 372:13 <b>pass</b> 203:7 272:3 <b>passed</b> 271:19,22 271:25 272:1,2 313:24 314:1,17 314:22 316:3 318:19 322:14,19 337:22,24 338:6 338:10,13,19,22 <b>patient</b> 369:12 <b>patrol</b> 13:18 14:2,4 14:5,16 18:14,16 33:3,7 110:13 197:11 <b>paused</b> 266:24	<b>pay</b> 333:1 <b>PC</b> 2:9 <b>PD</b> 12:25 13:15,16 <b>Peace</b> 167:20 <b>peaceably</b> 173:22 <b>pending</b> 8:21 110:20 <b>Penn</b> 371:7 <b>Pennsylvania</b> 371:8 <b>people</b> 43:9 102:4 102:23 105:22 155:13 172:10 173:15 175:4,15 178:4,10,21 179:4 201:7,8 235:1,10 239:17 247:5 250:22 270:15 313:20 343:22 <b>people's</b> 324:24 343:25 <b>pepper</b> 273:1,9,11 <b>perceive</b> 50:18 <b>perceived</b> 182:5 <b>percent</b> 145:2 148:8 261:12 <b>perception</b> 192:25 220:9 303:12 <b>perfect</b> 100:21 <b>perfectly</b> 101:3 288:9 <b>period</b> 138:9 <b>permissible</b> 134:3 <b>permit</b> 50:16 <b>permitted</b> 362:2,10 <b>person</b> 20:8 21:2 27:13 93:24 97:24 98:3 102:14 135:9 157:23 177:3 178:3,10 179:3,19 180:10,20 181:2,3 181:5 186:24 187:20,21 193:15 195:2 205:7,9 207:3,19 210:4,17 233:11 237:8 244:18,22 245:9	246:4 249:23,25 250:2 252:21 254:11 258:13 260:6 262:15 278:14 303:1 315:5 322:13 337:13 346:12 <b>personally</b> 111:14 268:8 <b>personnel</b> 94:11 114:5 197:24 328:19 <b>persons</b> 171:24 239:11 258:10,20 259:13 <b>pertaining</b> 8:10 <b>Philadelphia</b> 371:8 <b>Phoenix</b> 17:4,14 <b>photo</b> 22:23 23:3 27:24 32:11 <b>Photograph</b> 4:17 4:17,18,18 <b>photographs</b> 28:25 <b>Photographs/Co...</b> 4:16 <b>photos</b> 22:15 <b>phrase</b> 133:1 <b>physical</b> 98:4,4 102:7 106:7,9,13 109:25 110:3 273:14,16 325:11 <b>physiologic</b> 101:16 101:20 102:15 120:19 <b>physiological</b> 93:10 240:7 244:22 <b>Physiological/Me...</b> 93:7 <b>physiologically</b> 102:13 <b>pick</b> 173:20 198:9,9 312:20 <b>picked</b> 130:10 311:23 312:2,4,15 312:22 313:1,5,13 313:17,24 316:16	<b>picking</b> 312:1 <b>picture</b> 83:17 119:13 <b>pieces</b> 337:11 <b>pistol</b> 133:16,18 134:2 206:21 <b>place</b> 24:17 28:16 60:24 61:15 63:15 63:16 74:6 79:23 91:12 103:19 253:8 269:18 <b>placed</b> 32:14,15 42:15 68:16,23 70:2,22 110:12,15 110:21,23 111:6 114:21 125:10,14 277:7,9 <b>placement</b> 225:25 226:14 <b>places</b> 213:7 <b>PLAINTIFF</b> 4:7 <b>plaintiffs</b> 1:10 3:2 6:1 122:1,23 153:1 <b>Plaintiffs'</b> 151:3 153:13 154:12 167:23 168:5,9 220:15,19 223:24 224:3 225:2,6 <b>play</b> 153:10 294:18 <b>playing</b> 175:1 291:18 294:1 295:9 296:24 297:23 302:10 303:2,6,9 304:3 304:10,21 306:1 330:15 332:7,23 333:5,23 334:2,6 335:2,18 336:1,21 337:15 342:1 343:6 344:3,22 345:2 346:1 369:2 <b>please</b> 6:6,7 7:8 8:12 19:9 22:11 28:9 33:9 41:20 50:20 51:18
--	---	--	--	---

169:23 180:17 224:11 359:23 369:19 <b>plobe</b> 226:13 <b>point</b> 12:6 20:20 23:24 26:14 31:21 31:24 32:25 33:4 33:15,20 34:22 35:1 36:4,7,12,15 36:17 37:7,19 39:10,13,18 40:9 40:9,13,18 41:17 46:20 47:8,15,23 48:18 49:1,23 56:20 57:1 58:1,4 58:6 60:1,15,24 61:4 62:13 63:2 69:6,15,16 70:9 71:8,25 72:5,8,22 77:9 84:15 86:19 86:21 87:3,8,12 87:18 88:13 94:10 94:24 99:18 105:4 107:3 110:16,23 113:9,15 125:15 126:18 128:2 129:13,18 131:24 136:3 173:11 175:12 178:6 179:2 191:14 192:19,21 193:1,4 193:5 210:8 211:5 211:9 221:12 248:13 252:14 254:4 262:9,17 263:22 265:21 268:19 277:8 279:1,20 290:7,8 292:3 293:4,10,13 294:9,10,13,19,22 295:13,15,20 296:1,10,12,18 297:25 302:12 304:4,14,17,22 305:7,19,20 306:5 306:9 308:21	309:17 310:3,7,10 312:6 313:24 314:13 316:8,11 316:14 318:5,13 318:15,19 319:8 319:19 322:9,9 323:23 326:7 327:3,24 330:16 331:22 332:9 333:14 335:19 336:18 337:10 344:8,10 345:11 351:16 <b>pointed</b> 31:11 42:9 46:21 137:22 185:8,10 209:16 <b>pointing</b> 34:3 101:9 137:18 184:9,11 184:17 <b>points</b> 191:25 <b>police</b> 12:1,6 18:3,6 18:8,11 162:6 165:5,6 176:14 177:1 252:11 <b>policies</b> 84:17,19,22 84:25 85:9 86:6 164:16 181:11,12 236:17 350:19 <b>policy</b> 4:11,19 76:3 76:5,9,12 77:7 85:4,13,18,24 97:13,16 111:10 131:12 133:7,11 134:21 139:9,11 139:14 140:5,8,11 140:23 142:19,20 143:4,20,25 144:9 144:13,20,24 145:13,15,22 149:17 164:20 168:6 169:7,10,17 171:21 173:3,14 176:4,12 181:16 181:19,21,23 182:8 183:20,24 184:6,11 195:22	197:3,9,11,16 233:16 293:11 346:11 347:6 <b>popping</b> 55:17 242:4 <b>population</b> 174:19 <b>populations</b> 235:3 239:18 <b>portion</b> 80:14,17,18 81:24,24,25 184:13 199:13,23 200:1,1 201:17 202:5 <b>portions</b> 118:17,19 119:2,3 <b>position</b> 13:20,23 14:1 31:18 36:15 51:16 52:1 348:4 348:12,17,18 354:17 355:8,19 355:22,23 357:22 357:24 <b>positive</b> 60:2 118:16 <b>possibilities</b> 264:2 <b>possibility</b> 27:15 37:17,17 40:1 43:3 211:10 264:20 <b>possible</b> 104:2,4 239:23 366:1 <b>possibly</b> 49:16 114:3 263:12,14 306:24 357:12 <b>potential</b> 321:5 362:18 <b>potentially</b> 173:5 181:3 315:3 <b>PowerPoint</b> 4:10 4:20 80:19,20 81:25 82:4,8,14 93:2 106:17 145:9 146:9,23 202:11 233:22 <b>practical</b> 80:14 81:24 96:20 163:4	212:2 213:5 221:3 <b>practically</b> 148:11 <b>practice</b> 109:24 210:25 <b>practices</b> 236:17 <b>practicing</b> 180:3 <b>pre-academy</b> 12:17 12:21 <b>precautions</b> 156:11 <b>predominantly</b> 14:6,13 <b>preemptive</b> 40:19 <b>preexisting</b> 95:1,9 214:1 <b>prefer</b> 29:17 370:13 <b>preferred</b> 218:24 219:9 221:24 222:1 <b>preliminaries</b> 138:13 158:20 <b>preliminary</b> 45:7 <b>preparation</b> 122:15 128:5 <b>prepare</b> 12:17 351:10 <b>prepared</b> 20:1 40:16,19 87:18 145:2 346:9 351:14 <b>presence</b> 290:17 <b>present</b> 5:20 80:7 80:18 347:16 <b>presentation</b> 80:19 145:9 <b>presented</b> 220:5,12 <b>pressure</b> 70:19 93:16 243:25 344:6 345:22,23 <b>preventing</b> 108:12 <b>prevents</b> 75:11 <b>previous</b> 123:2,5,7 125:2 127:25 130:23 152:3 215:5 277:2 <b>previously</b> 14:20	40:22 54:6 58:15 62:4 103:2 122:8 124:22 127:12 158:21 218:20 <b>Primarily</b> 286:10 <b>primary</b> 155:12 <b>prime</b> 213:14 <b>print</b> 236:3,5 <b>prior</b> 12:11,19,25 26:14 38:2 39:25 41:3,8 47:13 56:11 75:5,13 77:3 82:23 83:2 88:7 104:17 105:4 118:14 125:8 137:18 154:1 296:14,19 297:1,4 305:9 356:8,9 <b>privy</b> 95:11 140:2 196:13 <b>probable</b> 249:15,20 253:3,22,23,24 264:13 <b>probably</b> 34:25 357:7 <b>probe</b> 87:4,14,20 88:14 89:9,10 90:7,21 91:6,8,24 92:6 97:23 225:25 226:14 362:14,20 <b>probes</b> 53:15 55:2 57:2 58:13 59:12 60:7,11 73:12 88:19 89:9,10 91:1,24 92:12,14 92:16 240:15 241:23 362:19 <b>procedure</b> 97:13 133:7 134:21 <b>procedures</b> 84:17 86:6 236:17 313:19 <b>proceeded</b> 26:4 <b>process</b> 12:21 136:13 177:20 <b>produce</b> 93:14
--	--	--	---	--

<p><b>produced</b> 7:2 98:18 101:10 168:17 169:16 364:16 365:1,25 366:15 <b>produces</b> 141:15 <b>product</b> 83:6 84:9 <b>Production</b> 169:4 <b>professional</b> 105:18 105:19 <b>proficiency</b> 231:23 <b>proficient</b> 232:6 246:3 <b>profile</b> 4:20 78:13 <b>profound</b> 102:5 104:6 238:19 <b>progress</b> 172:2 <b>prohibited</b> 367:12 371:14 <b>prohibits</b> 368:3 <b>prong</b> 215:19 219:25 <b>prongs</b> 212:7,23 215:12 216:3,22 217:16 222:8 354:4,24 <b>proper</b> 226:13 <b>property</b> 249:7,15 253:22 254:9 <b>provide</b> 99:21 227:5 266:12,15 267:3 268:15,17 282:16 371:12,16 <b>provided</b> 29:6 144:11,12,13 145:1,2 146:4,23 148:24 156:11 163:15 165:13 196:4 220:20 231:24 233:25 319:15 <b>provides</b> 9:19 42:12 <b>providing</b> 225:12 <b>provisions</b> 371:10 <b>proximity</b> 110:6,9 353:1</p>	<p><b>prudent</b> 343:21 <b>Psychiatric</b> 103:13 <b>public</b> 17:15 374:24 <b>pull</b> 23:20 31:10 36:5 41:22 42:6 59:17 71:22 72:10 72:23 75:3 116:15 117:2 134:2,18 208:12 211:2 299:25 360:23 <b>pulled</b> 26:9 30:22 31:13,25 32:24 33:7 36:1 40:4 41:17 67:8 203:21 205:18 211:1 243:9 279:20 294:5,7 299:5,15 300:3,12,20 301:13 333:14 336:2,7,10 353:20 366:9 <b>pulling</b> 33:14 62:18 67:16,21 152:25 154:6 204:10 296:20 297:2 <b>pulmonary</b> 102:4 102:23 <b>pulse</b> 112:15,23 113:9,10 114:15 310:8 311:15 324:4,15,18 325:18,22,24 326:5,23 327:7,13 328:22 329:12,25 <b>pulses</b> 324:24 <b>punched</b> 52:18 <b>puncture</b> 89:25 90:7,14,21 91:1 91:19 <b>purchased</b> 196:6 196:17 <b>purchaser</b> 234:1 <b>purpose</b> 33:14 47:6 70:15 73:14,15 136:19 137:5</p>	<p>187:8 189:9 211:21 <b>Pursuant</b> 371:4 <b>push</b> 195:22 207:25 208:12 <b>pushed</b> 209:15 <b>pushing</b> 111:23 <b>put</b> 14:22 20:16,18 28:6 30:25 51:11 51:11 59:2 68:7 69:25 70:5,13 72:6 74:9 80:3 100:12 178:1 225:22 234:13 269:18 272:18 313:20 314:9,12 315:9 316:17 317:7 325:17 339:18 344:8 359:22 <b>putting</b> 50:3 60:12 70:8 90:24 345:22</p> <hr/> <p><b>Q</b></p> <p><b>quality</b> 194:15 <b>question</b> 8:16,21,22 42:8 85:3,8 92:22 103:20 123:18 124:25 125:9,10 126:18 132:12,14 132:17 134:10,15 137:19 143:17,19 146:9 156:4 169:9 179:1,17 181:18 181:19 183:6 184:16 185:2 189:10,22 196:16 199:16 203:17 204:25 205:5 216:19 217:14 223:23 224:15 233:1 234:7 236:22 238:5 245:5 253:21 258:11 264:10 270:11 284:18</p>	<p>298:11 307:15,24 315:23 320:10 322:25 327:15 329:18 333:4 334:23 348:3 349:23 350:1,4,10 350:18 351:8 356:19 364:20 367:2,18 <b>questioned</b> 364:4 <b>questioning</b> 8:11 223:16 225:13 360:5 362:5 367:15 <b>questions</b> 8:11,12 26:12 45:7 107:5 115:5 121:1,7 122:2,9,13 147:18 154:19 170:18 177:14 194:18 201:22 203:2 231:7 233:3,7 247:18 288:4 291:20 293:25 298:23 349:6,22 350:2,23 360:2 367:12 369:14 <b>quick</b> 81:9 119:5,10 359:10,21 <b>quickly</b> 161:8 267:23 342:23 354:20 <b>quiet</b> 55:16 <b>quit</b> 341:13 <b>quite</b> 122:1,4</p> <hr/> <p><b>R</b></p> <p><b>R</b> 1:23 2:4 4:3 7:1 373:1,1,3 374:1,1 374:21 <b>rabbit</b> 253:13 <b>rabbits</b> 138:14 <b>race</b> 214:7 <b>radar</b> 16:7 <b>radio</b> 47:4 111:18 111:23 311:20</p>	<p>369:3 <b>raise</b> 6:7 <b>raised</b> 51:22 <b>ran</b> 32:1,6,22 33:2 34:5,6 39:1 48:5 49:10 54:16 56:18 56:25 57:6 58:10 63:8 172:13 175:18 255:14,18 275:23 286:15,16 292:21 296:10 <b>ranging</b> 86:23 <b>rapid</b> 265:12 324:21,22 325:9 325:10,14,14,15 326:1,5 <b>rapidly</b> 215:3 <b>rate</b> 93:16 107:14 244:1 324:15,18 325:12,22,24 <b>rates</b> 371:19 <b>rational</b> 210:17 261:3,10 <b>rationally</b> 258:13 259:23 260:1,11 290:20 <b>Ray</b> 7:11 <b>RAYMOND</b> 1:15 <b>reach</b> 158:7 307:14 307:16 <b>reached</b> 307:9,10 326:22 329:24 <b>reaching</b> 111:22 <b>reaction</b> 92:21 113:20 <b>reactivate</b> 59:12 60:11 62:17 67:24 68:2,22 77:12 <b>reactivated</b> 63:7 <b>reactivation</b> 59:21 <b>read</b> 9:25 10:1 82:22 123:7,12,14 123:21 138:18 141:22,25 142:3,8 147:8 149:4,7,25 151:16 156:9</p>
---	---	---	---	--

166:4 172:4 184:6 215:10,23 216:23 217:6 219:19 224:7 227:23 228:15 230:12,15 230:22 244:2 277:4 373:3 <b>reading</b> 12:25 98:23 185:12,21 215:10 216:18 284:13 370:12 <b>ready</b> 99:23 132:23 134:23 135:1,5 136:23 <b>Reagan</b> 162:2,3,4 <b>real</b> 119:10 359:20 <b>realize</b> 259:23 337:16 <b>realized</b> 56:21 <b>really</b> 8:10 13:13 23:20 36:14 47:21 56:2 60:14 71:20 100:7 105:14 114:23 189:5 245:19 250:6 252:7 319:14 352:16 353:1 <b>reason</b> 31:12 39:12 48:17 64:9,18 70:22 100:22 115:2 125:23 136:14 137:14 150:24 156:3 166:23 174:9 178:3 188:15,23 193:4 203:18 207:7 236:15,16 248:13 251:20 253:7,12 262:19 262:21 272:25 278:10,22 287:12 289:21 317:15,21 318:4 346:20 373:6 374:2 <b>reasonable</b> 135:9 166:21 171:13	175:7,17 185:18 193:10 194:1 249:21 250:1,11 250:15,18,19 251:2,5,9 253:13 263:16 264:3 <b>reasonableness</b> 10:6 174:10 <b>reasonably</b> 166:15 174:7 <b>reasoning</b> 247:11 <b>reasons</b> 207:15 272:24 290:10 <b>reattaching</b> 58:14 <b>recall</b> 8:4 23:7 26:25 36:25 37:10 42:15 46:25 48:11 48:15 51:14,22,24 52:1 53:14 57:3,4 61:2,17 62:12 65:14 67:16,18,20 67:23,25 70:8 71:17 73:6 74:16 75:14 79:11 80:12 80:13 88:6 97:2 103:20 105:3,6,7 105:8 112:1,4,7 114:16 118:5 124:5 126:18 127:23 128:16 129:15,16 130:7 133:14 138:10 150:14 158:2 163:25 164:2,13 164:17,22 165:20 182:18,21 183:9 183:15 199:22 203:14 206:4,6,7 211:14,20,22 219:5 224:6 230:25 231:3,12 231:17,20 232:23 244:19 245:21,22 256:15 257:18 265:7 268:1 282:5 282:22,25 283:14	283:16 288:8,9,24 291:10,13,16 303:24 310:18 312:17 320:4 342:15 357:20 361:2 367:15 <b>receive</b> 18:9 54:20 92:7 162:15 163:9 165:4 244:16 245:16 <b>received</b> 20:13 21:1 42:20 54:4 55:8 79:2 98:25 112:5 163:12 164:9,23 165:10 167:9,10 198:24 221:8 242:3 249:22 274:7 299:18 351:19 <b>recess</b> 61:9 81:14 99:7 115:9 116:5 121:17 158:15 194:9 218:12 265:17 323:17 <b>recitation</b> 309:8 <b>recognize</b> 19:15 29:4 75:25 76:1 82:13 96:16,18 245:23 342:8 <b>recognized</b> 103:10 233:2,5 <b>recollection</b> 20:11 51:6 57:19 67:13 68:21 79:8 127:3 150:23 163:18 165:3 181:24 190:6 199:2,4,21 216:15 <b>recommendation</b> 140:17,24 183:17 183:22,25 185:17 <b>recommendations</b> 142:14 147:9 148:21 149:4 228:16 230:23 <b>record</b> 5:1 7:10	9:24 46:3 61:7,10 81:13,18 98:17 99:3,6,9,11 100:8 100:9,13,22 115:8 115:11,25 116:4,7 119:10 121:12,16 121:21 130:18 148:10 155:3 158:10,11,14,17 194:5,8,11 218:11 218:16 225:15 265:16,18 266:24 284:12 308:16 323:16,21 324:18 364:4 365:25 366:5,7,20,22 368:23 369:22,23 369:25 <b>recorded</b> 130:24 <b>recording</b> 130:21 <b>records</b> 16:19 100:3 153:19 <b>recreate</b> 229:13 <b>recreating</b> 229:16 <b>rectangle</b> 33:6 <b>red</b> 90:2,16 <b>redeployed</b> 62:23 <b>redness</b> 282:12 <b>reduce</b> 219:8 <b>reducing</b> 97:25 98:11 <b>refer</b> 52:11 62:13 69:23 73:5 112:22 181:11 182:7 242:18 279:24 284:22 <b>reference</b> 20:8 <b>referencing</b> 143:22 <b>referral</b> 371:17 <b>referred</b> 86:23 284:19 331:7 <b>referring</b> 25:22 65:16 83:5 88:9 155:23 184:23 208:17 233:21 280:21	<b>reflect</b> 284:12 <b>reflects</b> 215:19 <b>refrain</b> 236:25 <b>refresh</b> 41:10 163:21 166:7 <b>refresher</b> 162:21 163:6,10 164:5 182:1 221:17 <b>refused</b> 296:11 <b>regard</b> 95:16 102:20 110:5 285:9 <b>regarding</b> 84:22,25 85:9 120:1 164:11 164:24 165:22 166:6 <b>regardless</b> 222:19 329:11 <b>regards</b> 223:22 <b>regularly</b> 195:20 <b>Regulations</b> 371:5 <b>related</b> 372:13 <b>relating</b> 7:25 9:3 11:11 <b>relation</b> 19:21 23:10 24:7 25:6 118:2 <b>relationship</b> 371:10 <b>relatively</b> 26:21 55:16 <b>relatives</b> 158:25 159:3 <b>relay</b> 126:4 <b>release</b> 82:19 134:22 135:1,4 157:6 <b>releasing</b> 135:6 <b>relevance</b> 236:8 <b>relevant</b> 150:7 230:17 <b>relied</b> 41:4 <b>remainder</b> 29:18 <b>remaining</b> 91:1 <b>remember</b> 14:22 16:13,14 24:10,16 31:20 38:22 48:16
--	--	---	---	---

56:3 61:2,21 63:3 63:7 103:25 104:3 105:10 112:21 123:24 127:5 128:18 129:19 131:6 132:4,8 150:18 156:8 157:13,16,20,22 160:5,7 163:1,8 164:6 182:10,12 182:25 183:16 199:11,17 201:16 201:21,24 202:3,8 202:9,10,11 203:2 203:4 207:2,5 208:6 211:15 215:4 231:7 233:3 233:7 246:20 257:19 267:24 268:3 271:6 275:3 280:8,9 281:6,7 281:11,14,23,25 283:23,25 284:3,4 284:5,18,23,24 285:5 286:14,20 286:22,24 287:23 288:6,10,19 289:4 289:5,6,7 311:4 313:9 324:14 342:24 347:21 356:19 357:23,23 357:25 358:2 360:5 362:4 363:10 364:2 365:7 366:6 <b>remind</b> 353:14 <b>reminding</b> 288:12 <b>remove</b> 59:1 72:19 125:21,24 <b>removed</b> 125:16 <b>render</b> 253:9 <b>repeat</b> 130:15 212:11 250:16 321:21 <b>repeated</b> 351:21 <b>repeatedly</b> 306:11	<b>repeating</b> 354:10 <b>Rephrase</b> 180:17 <b>report</b> 4:15,21 19:18 20:1 56:12 57:5 62:9 63:6,7 67:7 89:2 122:19 122:20 210:23 215:19 216:15 242:14 252:8,13 279:10 282:3 284:13,20,23 331:7 351:10 <b>reported</b> 2:14 252:15 372:8 <b>reporter</b> 5:17,18 6:5,7,13 29:10,12 81:1 116:17 266:23 369:24 370:3,6,9,13,18 370:20 371:7,16 372:5,16 <b>reporting</b> 252:12 371:5,7,12,16,17 <b>reports</b> 19:20 20:16 <b>represent</b> 5:21,25 6:3 7:18 143:14 <b>represented</b> 143:24 152:2 <b>representing</b> 5:22 366:2 <b>represents</b> 122:1 <b>request</b> 5:14 <b>requested</b> 111:11 141:22 371:21 372:11 <b>requesting</b> 112:2 <b>require</b> 97:16 110:6,8 <b>required</b> 44:3 80:22 82:21,24 198:4 200:12 362:17 <b>requirements</b> 82:19 225:25 226:14 227:19 <b>research</b> 235:22,24	235:25 236:22 246:2,12 274:14 <b>reserve</b> 9:23 44:5 45:1 <b>reserved</b> 44:10,12 44:14 370:22 <b>Reserves</b> 17:23 <b>reserving</b> 9:12 44:1 <b>residence</b> 35:12 207:10 <b>resistance</b> 76:25 <b>resisting</b> 178:17,20 178:22 179:1 314:5 341:13 <b>resort</b> 254:23 <b>respect</b> 169:10 179:17 193:13 <b>respectfully</b> 170:15 225:10 <b>respiration</b> 93:16 243:25 <b>respond</b> 288:13 339:19 340:1,7 341:7 352:1 <b>responded</b> 20:4 21:11 23:2 339:5 <b>responding</b> 21:9 <b>responds</b> 339:14 <b>response</b> 231:12 340:3,8,9 <b>responsible</b> 86:5 97:12 <b>responsive</b> 339:9 339:11,12 <b>responsiveness</b> 9:13 339:8,13 <b>rest</b> 45:17 325:13 <b>restrict</b> 345:8 <b>restricted</b> 169:20 <b>restroom</b> 61:4 <b>result</b> 10:12,15 11:9 54:22 95:1 241:1,7,7 242:6 <b>results</b> 112:19 <b>return</b> 325:23,25 <b>returned</b> 162:24	<b>reverses</b> 268:23 <b>review</b> 83:2 84:9 96:11 115:4 118:14,19 123:2 128:4,9,11 221:13 349:18 371:21 372:10 <b>reviewed</b> 81:25 82:14 84:11 89:5 97:3,18 98:7 101:12 106:15 117:3,12 118:1,8 118:18 120:1,12 120:17,18 122:19 122:20 123:5 124:19 125:7 126:16 128:23 130:1 165:17 <b>reviewing</b> 129:3 <b>reword</b> 113:22 <b>rhythm</b> 93:17 227:1 244:1 <b>ride</b> 26:2 <b>right</b> 6:7 10:4,19 13:4,16 17:21 24:14 26:6,18 29:25 30:1,5,18 31:15 32:3,7,15 32:25 33:18 34:4 34:9 40:5 43:15 44:9,11,24 45:10 48:6,18 50:21 56:15 58:17 59:3 62:10 63:9 66:6 79:5 89:22,24 90:11,12 99:23 104:17,23 105:3 110:13 114:22 117:18 119:19,21 119:24 120:10 121:2,24 122:24 123:20 124:2,18 126:12,22 127:24 128:4 129:17 130:4 132:11 133:6,13,21	134:15 138:12 143:12 145:23 146:11,24 148:3 149:11 150:1,5,18 150:22,24 151:25 154:4,16,18 155:5 155:21 156:7,19 156:22 157:4 158:1,4 162:5,11 164:9 165:4,21 166:11 167:22 168:3,13,14 170:3 170:14 171:17 172:7,11,14 173:6 173:22 174:2,10 174:15 175:21 176:22 177:1,4 180:3,14 181:15 183:16 184:8 185:6 186:3,6,11 186:24 188:4,24 193:15 194:13 195:3,15 198:8,20 198:25 199:25 200:3,6,11 202:4 203:10 204:17,21 205:5,23 206:5 207:6 209:8 216:25 217:17,24 220:8,14 222:15 222:21,25 223:9 223:13,18,20 224:2 225:21 227:14 228:24 229:20 231:4 233:9,13,18,20 234:14,19 235:14 237:9 238:14 239:10,19,24 240:6,24 241:3,5 242:7 244:20 247:7,18,19 248:7 249:14 250:24 252:1,4,25 253:4 254:8,8 256:5,13 257:11 261:4,6,14
---	---	---	---	--



261:17 262:21	157:6 171:12	285:4 286:10,11	143:5 145:17	301:16,20 302:2,3
263:5,9,18 265:11	178:23 181:9	287:15 289:14,19	146:14,16,19	304:1,19 318:21
271:12 272:21	219:8 227:7	289:22 303:3,13	149:18,20 171:24	322:21 333:24
274:25 275:7,10	230:20 273:4	354:12,18 355:8	172:20 181:16,19	346:18 363:20,24
278:4 279:4,17	<b>risks</b> 98:2 106:18	368:11	181:23 182:8	368:15
280:21 281:4,12	348:6		215:18 219:9,13	<b>secondary</b> 21:11,24
281:18 284:6,17	<b>road</b> 2:9 3:4 5:14	<b>S</b>	221:3,16 222:1,16	256:6
284:23 285:19,25	20:5 22:1,6,19,23	<b>safe</b> 68:5,16,23	222:24 225:24	<b>seconds</b> 59:18 67:3
286:8 289:6,22	23:10,11,14,18,21	132:14	228:7 233:19	67:4 114:19
290:7 291:5,19,22	23:25 24:3,3,7,8	<b>safely</b> 209:19	239:20 300:2	115:17 130:10,11
292:9,12,21,24	24:18,19,23 25:12	<b>safer</b> 97:24	329:6 362:4	130:12,13,14,22
293:21 294:2,2,3	26:5 27:17,18	<b>safety</b> 41:25 68:7	<b>scale</b> 33:9,23	130:23 139:16,25
294:14,25 295:12	28:8 30:12 31:23	132:15,19 133:16	<b>Scarborough</b> 5:7	140:10,18 142:15
295:22 296:14	<b>roads</b> 23:21	133:19 134:3,6,8	6:3	176:2 179:18,19
297:3,24 298:22	<b>roadway</b> 23:14	134:14,18,22	<b>Scarbrough</b> 1:11	180:6,13,22
299:24 300:7,12	342:2	135:1,4,6 299:8	3:13 9:2 373:2	181:10 182:5
301:22 302:6,8,11	<b>role</b> 39:6 47:10	360:7	<b>Scarbrough's</b>	183:4 185:13,15
302:16,20 303:3,7	<b>roll</b> 72:3,9	<b>safety's</b> 133:25	176:11	243:1 279:13,16
304:11 306:7,13	<b>rolled</b> 58:9 125:5	<b>sake</b> 365:23	<b>scene</b> 63:10 69:3	292:6 294:3
309:20,24 310:3	252:25 335:5,11	<b>SAMUEL</b> 1:6	74:17 252:5,17	295:10 296:2
312:15,22 313:6	<b>rolling</b> 352:2	<b>save</b> 45:15 118:25	255:22,25 270:13	297:24 299:3,9,24
315:10,16,21	<b>room</b> 80:2 210:7	<b>saving</b> 365:23	321:23 344:1,2	300:1,2,7,12,18
316:3 321:21	273:2,9	<b>saw</b> 23:6 30:20,22	352:7	300:20,24 301:10
323:10 326:17,23	<b>rooms</b> 155:19	31:1,15,16 248:6	<b>school</b> 158:6 175:1	301:11,12 302:11
327:7 328:22	<b>roster</b> 329:5	276:5 280:13	<b>Scott</b> 347:22	303:8 318:25
329:2,25 330:13	<b>rotated</b> 18:25	286:14 313:11	<b>Scottsdale</b> 3:11	319:10 320:1,8
330:16 332:24,25	<b>rotation</b> 18:22	342:13	<b>screamed</b> 364:5	324:10 333:17
333:4,6,19 334:3	<b>rough</b> 34:23	<b>saying</b> 31:22 38:23	<b>screen</b> 360:9,13,16	336:11 368:15
334:22 335:17	<b>route</b> 369:11	43:11 44:4,10,16	361:19	<b>secret</b> 153:22
337:7,23 338:21	<b>RPR</b> 2:14 371:24	45:20 71:13,15,15	<b>scruff</b> 332:12	<b>section</b> 145:7
339:1 341:12,24	372:21	71:16,18 99:25	<b>seal</b> 372:15	202:21
342:11 343:3	<b>rub</b> 339:15	105:7 112:5 142:3	<b>search</b> 208:23,24	<b>sections</b> 172:3
344:8,14,18,19	<b>rule</b> 9:18 44:23	150:14 152:15	209:1 249:3 253:2	<b>see</b> 20:6,24 21:3
347:7,12,16,23,25	97:14 347:9	166:3 182:10	<b>searches</b> 236:1	22:18,19 24:2
348:22 350:4	<b>rules</b> 8:6,9 362:2,11	228:15 242:2	<b>second</b> 17:1 58:25	26:2 27:4,9 31:6,8
351:8 355:20	371:4	250:11 267:24	76:22 78:23 85:8	32:15 33:16,17
357:1 359:11	<b>run</b> 39:9 48:18	268:3 271:6	97:21 98:16	34:2 36:14,18
361:7,13 363:13	49:14,15 56:9	291:16 301:7	120:12,14 158:9	37:13,22 39:14
365:20 366:5	108:15 174:14	337:6,16 347:5	183:18 198:21	41:8 44:16 48:10
367:9 368:15	214:14 254:19	355:12,14 358:1	199:25 206:18	53:13,17 57:1
369:13,18	289:8 303:10	<b>says</b> 20:8,23 21:1	209:8,10 266:20	63:3 65:17 66:1,8
<b>right-hand</b> 342:4	<b>running</b> 31:14 32:7	57:8 66:10 78:3	279:23 292:9	66:18,25 67:5,10
<b>rising</b> 328:7 338:25	33:4,21,22 34:16	78:25 82:5 83:20	295:22,23 299:12	70:20,25 71:4,22
<b>risk</b> 60:17 83:11	34:18 48:13 51:25	84:15 101:19	299:18,25 300:3	72:12 77:19 78:23
84:6 93:14 94:25	61:22 62:4,7	115:2 119:13,17	300:11,12,14,14	83:18 86:14 89:3
98:12 101:21	104:19 175:9	141:24 142:22	300:17,23 301:7	89:20 90:3,8,17

90:22 91:10,15 93:25 96:25 97:9 98:23 101:17 102:8,25 104:7 108:12 116:11 117:10 119:16 122:21 126:22 130:16 147:13 148:8,15 149:15 153:7,9 154:22 167:13 185:9 198:13,13 203:24 210:24 211:2 218:22 219:2 225:13,17 227:3 237:21 238:1 274:6 285:18,21 285:24 287:3,9,20 294:12 298:25 303:3 313:13 318:25 319:21 321:18 326:12 328:4 334:4,15 335:15 336:11 338:25 342:2 345:11,21 361:4 363:23 366:10 <b>seeing</b> 43:12 56:5 130:12 257:11 <b>seek</b> 268:14 282:10 282:14 <b>seeking</b> 49:13 <b>seen</b> 63:23 78:15 105:24,25 124:10 128:19,25 215:15 219:2 221:6 274:24 279:10 318:21 319:5,6,6 319:9,11 321:8 322:2 334:17 <b>sees</b> 42:25 130:22 <b>send</b> 21:17,18 122:10 267:21 311:21 370:15 <b>sending</b> 301:9 <b>sense</b> 174:24	203:16 261:17,19 262:1 290:25 <b>sensitive</b> 219:13,14 221:23 <b>sent</b> 10:22 11:19 151:21 301:16 <b>sentence</b> 57:10 76:22 90:5,19 97:22 <b>separate</b> 202:7 <b>separately</b> 29:14,16 <b>September</b> 2:6 5:11 203:20 204:11 <b>SEQ</b> 65:18 <b>sequence</b> 65:18,21 66:16 68:4 <b>serial</b> 64:4 <b>serious</b> 83:21 84:2 84:6 94:4,25 98:1 98:12 101:21 113:13 119:14,24 227:6,13 <b>serve</b> 14:6 206:8 <b>service</b> 14:5 250:3 278:12,18 <b>services</b> 5:17 371:7 371:9,11,12,13,15 371:16,18 <b>serving</b> 206:9 <b>session</b> 183:14 221:4 369:16 <b>set</b> 84:16,18,21,25 85:4,13,18 97:16 99:13 100:19 155:10 182:15 <b>sets</b> 85:9 <b>setting</b> 120:2 <b>seven</b> 53:11 86:5 155:13 161:20 203:22 371:7 <b>seventh</b> 78:24 <b>severe</b> 102:5 104:12 238:22 <b>severely</b> 104:13 <b>Shaking</b> 335:16 <b>shed</b> 28:3	<b>sheet</b> 4:11 123:25 154:20 370:12 <b>sheriff</b> 1:12,14,17 1:19 5:8 6:3 9:2 17:18 176:11 <b>sheriff's</b> 11:22 12:1 12:9,11 13:7,9 65:14 76:3 78:5 84:23 85:6,11 111:10 133:11 134:22 139:9,12 139:14 140:5,7 141:2 143:20 144:8,25 145:14 145:22 148:24 149:13 150:6 164:10,16 165:17 167:11 168:7 169:11 176:5 183:13 195:20 196:5 198:10 202:14 208:23 224:24 232:14 234:1 236:18 238:15 269:2,7 274:8 275:12 319:15,25 320:7 346:11 <b>SHERRI</b> 1:4 <b>shift</b> 14:11 18:21 19:4,5,7 209:25 266:6 <b>shoot</b> 132:23,24 133:4 134:23 135:2,5 200:10,12 200:15 219:25 289:23 355:13,20 <b>shooting</b> 52:8,12,16 138:3 212:7 217:20 220:7 355:6 <b>shoots</b> 269:21 <b>short</b> 61:4 138:9 <b>shortest</b> 185:18 <b>shortly</b> 47:3 196:4 196:17	<b>shot</b> 58:23 137:22 200:22,23 216:10 218:1 245:10 269:12 289:21 290:4,5 299:9 304:4 352:11 353:5 <b>Shots</b> 171:24 <b>shoulder</b> 125:15 126:14 280:5 344:13,14,15 345:3 <b>shoulders</b> 51:20 70:5 <b>shoved</b> 210:9 <b>shoving</b> 210:11,14 <b>show</b> 26:10 27:23 36:7,19 37:2,4 40:13 66:20 147:15 168:4 220:18 224:3 225:5 269:13 275:2 295:23 296:12 298:10 302:8 330:13 335:24 341:25 358:22 <b>showing</b> 19:13 32:16 75:24 78:12 96:10 269:23 <b>shown</b> 243:18 288:16 <b>shows</b> 66:12 67:3,3 79:6 144:12 196:4 203:20 343:4 <b>siblings</b> 159:21 <b>side</b> 31:17 32:6,7 32:22 51:21 225:22 230:8,8 255:14 281:4,18 281:19 283:15 326:14,16,17,17 326:18,23,25 344:19,20 <b>sight</b> 249:25 277:24 <b>sign</b> 9:25 10:1	123:7,12,21 147:7 149:25 150:19 157:13,22,25 158:2 172:14 174:14 175:9,19 224:15,18 227:3 227:23 228:13 <b>signature</b> 9:24 370:22 <b>signed</b> 142:3 150:25 155:24 156:2,5,16,19 157:8,17 224:5,19 224:23 228:6,7,22 <b>significance</b> 39:4 <b>significant</b> 70:18 86:24 <b>signs</b> 310:5 319:21 323:24 338:23 <b>similar</b> 99:17 117:21,23,24 224:4,16,18 <b>simple</b> 224:15 <b>simply</b> 101:9 169:9 244:5 298:7 <b>single</b> 233:23 263:3 <b>single-incident</b> 25:8 <b>single-shot</b> 58:18 <b>sir</b> 30:6 32:18 34:10 50:20 122:3,6,14 122:22,25 123:6 124:1,5,9,14,21 125:9,20,22 126:1 126:7,17,25 127:3 127:14,17 128:8 128:10,25 129:13 130:3,6,9 131:8 131:15,19,23 132:3,7,10,16 133:10,14,17,20 133:24 134:7,17 134:24 135:3 136:12,16,18,21 137:12,25 138:5 138:17,20,24
--	---	--	--	---

139:2,7,10,13,17	217:13,18,23	293:2,5,9 294:4	211:25 259:15	21:15 26:8 30:14
139:19,21,23	218:2,4 219:1,4,7	295:25 296:4,17	321:7 348:20	35:15 39:8,12
140:2,6,11,15	219:12,17,23	296:22 297:21	<b>sitting</b> 332:20	42:25 50:17 56:8
141:4,17,20,23	221:19,25 222:6	298:2,9 299:4,10	362:3	64:23 105:20
142:2,6,12 144:8	222:12 223:1,10	300:9,13,16,22	<b>situation</b> 21:16	108:15 116:13,19
144:16,19 145:6	223:14 226:19,22	301:15 302:5,7	47:11 54:15	133:3 134:5
145:16,21,24	228:14 229:21	303:21,24 304:13	172:15 175:23	169:24 170:2,5
146:12,18 148:4,9	230:9,14 231:15	304:16 305:1,7,12	178:11 179:10	174:14 175:18
148:13,17,23	232:11,22 233:4,8	305:24 306:20	182:15 183:3	188:13 204:2,2,20
149:6,10,12,23	234:6,25 235:4,22	308:23 309:15,17	195:9 209:17	206:10 212:1
150:3,9,17,21	237:13 238:14,18	309:25 310:6,9	211:23 246:21	217:4 239:20
156:7,19,21,24	241:9 246:8,17	311:7,14,16,19,25	247:9 256:23	250:6 251:14,15
157:7,10,21,24	247:21 248:8,12	312:7,10 313:2,12	257:1,8 258:16,24	251:19 270:20
158:4,24 159:17	248:15 250:13,17	313:16 320:4,16	259:1,22 281:24	273:8 275:5 276:4
159:20,24 160:15	251:3 252:23	320:20,25 321:3,6	297:15 317:19	278:22 287:6
160:18,21,23	253:1,15,15,18	323:2 324:1,5,7	321:18 346:9	289:16 329:10
161:1,10 162:7,10	254:4 255:7,18,23	324:17,19 325:21	351:4 352:16	355:9
162:17 163:5,23	256:1,10,12,15,17	326:6,9,24 327:2	<b>situations</b> 87:20	<b>somebody's</b> 49:13
164:6,22 165:9,15	256:19,22 257:9	327:5,8,14,16,23	202:1,2 211:22	108:13 250:23
165:20,21,24	257:20,23 258:21	328:1,4,16,19	213:6 258:19	266:23 275:18,20
166:2,9,20 167:8	259:16 260:7	329:18,23 330:8	<b>six</b> 81:1,2,3,4 84:15	275:23
168:2 169:23	261:7,18 262:2,13	330:12,22 332:3,6	139:6,11 176:1	<b>someone's</b> 213:25
170:1 171:8 172:5	262:17 264:24	332:19,21 334:14	203:22 217:11	214:9,14 264:4
173:18,23 174:9	265:24 266:4,11	335:8,12 336:9,13	273:10 301:12	274:9
176:3,13,15,24	266:17 267:6,9,13	336:16 337:14,18	318:20 319:9	<b>something's</b> 114:3
177:2,13 178:15	267:15,17 268:5	337:20 338:8,12	322:20 346:17	<b>soon</b> 31:13,25 47:2
178:19 179:10,21	268:13,16 269:1	339:4,7,25 340:2	347:25	62:7 72:22 125:16
181:14 182:2,12	269:13 270:5,14	340:5,10,13,15,17	<b>sized</b> 370:17	291:23
185:14,16 186:3,8	270:18,21,23	340:21 341:10,14	<b>skin</b> 72:20 362:15	<b>sooner</b> 8:19
186:15,19 191:7,8	271:5,9,14,23	341:17,20,23	362:19	<b>sorry</b> 12:7,7 16:5
192:24 193:6	272:17,20 273:12	342:18,22 343:2,9	<b>skip</b> 216:25	26:13 32:18,24
194:23 195:4,21	273:20 274:10,13	343:12,19,19	<b>slapped</b> 32:5,6	34:10 47:3 57:12
196:8,15,20 197:2	274:16,22 275:1,4	344:10,21,24	255:14,17	75:16 83:15 85:2
197:18 198:1,7,10	275:15,17,19,22	345:1,9,11,17	<b>slapping</b> 303:19	116:1,2 120:4,6
198:16,20 199:1,3	276:1,23 277:1,3	346:6,13 347:3,8	<b>slash</b> 226:21	122:2 140:9 151:5
199:6,10,16,18,24	277:6,10,13 280:3	347:14,18,24	<b>slide</b> 93:13 125:15	162:4 167:14
200:4,7,9,20	280:12 281:1,17	351:11,22,25	144:12	168:2,23 183:23
201:1,15 202:22	281:22 282:9,11	352:9,21 353:4	<b>slides</b> 199:8 201:20	207:14,22 209:3
203:1,5,10,13	282:15,18,20	354:13,21 355:2	202:5,7,11	234:9 266:11
204:12,22 205:13	283:3 284:9,14	355:21 357:3	<b>slipped</b> 345:12	272:2 274:4
206:7,22 207:5,17	285:17,20,23	358:3,10 359:3,4	<b>slowly</b> 26:7	280:18 281:6,25
208:3,9,15 210:3	286:6,21 287:1,5	<b>siren</b> 248:25	<b>small</b> 117:22 273:9	283:9 296:25
211:4,14 212:9,12	287:24 288:5,10	<b>sisters</b> 159:15,22	<b>smaller</b> 23:21	297:1 301:5
212:16 213:1,13	289:18 290:6,15	<b>sit</b> 67:15 103:5	<b>Smith</b> 2:9	323:13 334:10
215:7,14,24 216:2	290:18,23 291:3	104:3 117:25	<b>solely</b> 97:12	335:1
216:5,9 217:5,10	291:13 292:1,7,13	143:9 144:3	<b>somebody</b> 20:21	<b>sort</b> 101:4,5

<b>sound</b> 55:17,23,24 56:1,3,5 66:14 114:22 242:4 319:2 363:2,5,8 369:3 <b>sounds</b> 304:19 333:19 <b>source</b> 100:5 138:22 <b>south</b> 3:15 159:1,3 159:7,16,19,22 160:3 161:13 <b>space</b> 273:5 <b>speak</b> 46:2,3 103:9 103:12 111:23 193:6,7 196:1 201:4 307:3 335:20 359:20 <b>speaking</b> 26:24 45:23 46:3,9,12 46:13 143:6 256:14 257:2 314:3 341:2 361:23 <b>speaks</b> 308:16 <b>specific</b> 9:5 16:3 17:16 18:17 23:18 84:24 117:18 118:7 132:8 164:18 169:22 172:18 203:6 211:17,23 215:1 223:22 246:20 329:4 354:15 355:6 <b>specifically</b> 11:6 46:4 67:16,18 84:24 85:8 93:13 103:25 112:2 125:23 129:11 140:9 164:15,19 171:23 172:16 199:5 223:2 255:11,21,24 267:18 353:12 354:13	<b>speculate</b> 243:5 244:14 307:6 <b>speculating</b> 201:23 <b>speculation</b> 316:24 317:3 <b>speed</b> 16:5,6 49:14 <b>speeding</b> 169:25 <b>speeds</b> 173:16 214:16 <b>spell</b> 12:2 <b>spent</b> 59:2 <b>spoken</b> 138:15 296:5 338:5 <b>spouse</b> 1:5 <b>spray</b> 108:2,6,7,9 108:11,15,17 269:17,17,21 272:21 273:11,18 273:21 <b>sprayed</b> 273:2 <b>sprays</b> 273:9 <b>spread</b> 73:12 87:4 87:20 88:14 91:24 92:6 <b>sprinting</b> 355:9 <b>Spurgeon</b> 1:18 3:13 9:2 21:10,21,23 22:7 23:6 24:9 25:23,24 26:1,23 26:24 27:3,10 47:5,12,17 63:9 63:11,12 69:2,7,9 71:1,22 72:10 73:4 74:5,24 75:18 103:17 106:9 111:14,17 124:23 125:18 129:4 138:25 139:24 140:3 151:1,2 156:20 157:8 178:23 179:7 189:24 190:1,20,22 191:2 191:8 192:9 201:13 224:5 255:24 256:14,24	257:15 265:2 267:16 268:3 269:10,11 270:25 271:3 279:16 284:11 308:24 309:4,9,10,13,16 310:23 311:2 332:10,25 334:13 334:20 342:7,12 342:20,21 343:1,7 344:20 345:7 346:3 347:19 <b>Spurgeon's</b> 128:14 129:24 151:14 153:20 154:1 168:12 342:16 366:9 369:2 <b>Spurlin</b> 3:3,3,3 4:5 5:24,24 9:11,15 9:17,20 31:7 37:25 43:16,18,22 44:3,14,18,21,25 45:5,7,10,18,21 46:2,8,15,18 48:8 48:24 49:3,21 50:9 53:4,10 57:21 59:5,8,13 59:22 60:13 61:25 68:9,25 73:22 76:14 85:15,20 86:2,8 91:2,21 92:1,9,18,23 93:21 94:7,18 95:6,14 96:4 99:10,10 100:11 100:25 103:23 106:21 107:22 109:16 121:3,10 121:23,25 126:3 129:9,10 135:20 136:1,10 137:4 138:1,8 139:4 141:7,13 142:7,13 142:21 143:6,16 143:19,22 144:1,4 144:6,7,17 145:10	146:7 147:6,14,25 148:6 149:19 150:4,15 151:5,11 151:14,23 152:5,9 152:16,19,22 153:3,6,9,12,21 154:1,9,16,17 156:18 157:2,3,18 158:18 163:19,24 164:3 166:10,16 166:22 167:3,15 167:25 168:10,16 168:23 169:8 170:15,17,25 171:10,20 172:22 173:13,21 174:5 174:21 175:13 177:9,15 178:7 179:5,25 180:9,18 181:7 183:11,21 184:8,12,15,20 185:1,6,7,23 186:2,13 187:4,16 188:3,20 189:8,18 190:7,19 191:18 192:6,15 193:2,19 194:6,12,24 195:12 196:2 199:12 204:9 208:19,21 212:18 212:21 214:13,23 216:16 218:6,17 220:17,25 221:2,9 221:15 222:11 224:1,14 225:4,19 225:23 226:7 227:10 228:10,23 229:10,13,19,25 230:2,7 232:3 233:23,24 234:5,8 234:12,17,23 235:8 236:21 237:6 238:13 239:9 240:5,23 241:17,25 242:11 243:15,21 244:15	245:4,15 246:9 250:9 253:10 254:7 257:3 258:17 259:5,10 260:2,17,23 261:24 262:14 263:2,13,23 264:9 264:22 265:11,20 266:5,25 267:2 268:10 270:7 271:10,16,21 272:7,14 273:21 275:9 276:14,19 278:8 279:21 280:23,24 282:1,6 283:1 285:12 286:19 287:2,22 288:11,15,18,22 289:1,3,20 290:1 290:24 291:4 293:14,20 294:17 294:23 295:5 297:17 298:17,21 299:17,23 300:6 300:10 301:4 302:1,19 303:22 305:3,16 306:21 307:8,23 308:2,12 308:15,18,20 309:12,23 310:2 310:19 311:3,8 312:19 313:10,18 313:23 314:24 315:25 316:7,13 316:22,25 317:3,9 317:20 318:2,10 318:18 319:3,23 320:5,18 321:20 322:12,17 323:1,3 323:12,22 325:3,6 327:11 328:14 330:4,20,24 331:6 331:12,17 332:8 333:15 334:11 335:3,9,14 337:2 338:4,9,16,17
---	--	--	--	--

339:23 341:6	266:13,25 278:4	279:2	277:21	88:21
343:20 344:4	303:7 362:5	<b>status</b> 95:24	<b>structure</b> 22:18	<b>successfully</b> 77:16
345:18 346:24	363:12	<b>stay</b> 47:16	23:11 24:5 28:3,4	77:22 145:18
347:4,15 348:13	<b>started</b> 11:17,18,20	<b>step</b> 36:20	30:23 32:6	<b>succession</b> 203:23
348:19 349:1,7,11	14:16 33:20 34:16	<b>steps</b> 303:16	<b>structures</b> 24:22	<b>sudden</b> 93:14
349:17,20,25	34:18 36:6 62:7	<b>sternum</b> 339:15	<b>struggle</b> 102:7	102:16 214:5
350:4,7,11,14,20	123:11 292:11	<b>sticking</b> 328:9	106:7,9,13 310:21	<b>suffering</b> 102:4,23
350:24 351:7	296:11 362:25	<b>sticks</b> 71:20	322:20	235:11 237:1,8,15
352:5,18 353:13	<b>starts</b> 57:10 96:23	<b>stipulate</b> 44:25	<b>struggling</b> 275:24	238:7
353:18,21,24	131:2 363:9	118:24 119:1	288:23 346:16	<b>sufficient</b> 232:13
354:2 355:17	<b>state</b> 5:20 7:8 8:1	<b>stipulated</b> 44:19	<b>strung</b> 346:23	<b>suggest</b> 46:8,10
356:6,10,14,24	40:22 53:24 57:23	<b>stomach</b> 72:4 125:1	<b>stuck</b> 334:4	100:17 204:1
357:9,15 358:5,12	89:22 100:25	125:2,5 126:13	<b>students</b> 82:20	264:5 289:15
359:25 360:3,11	101:1 102:13	217:3,22 354:6	<b>stun</b> 72:16,19,21	<b>suggesting</b> 99:16
360:20 361:1,9,14	181:12 227:20	<b>stop</b> 26:11 56:20	73:8,14,15 87:19	<b>suggestion</b> 29:16
361:20,25 362:3,8	243:19,24 354:14	107:4 108:14,15	186:17 189:2	46:17
363:1,14 364:3,12	371:2 372:2,6,16	115:16 137:11	211:16,19,21	<b>suit</b> 9:1
364:17,20,24	<b>stated</b> 69:2 100:8	172:14 174:14	212:6,11,17 333:1	<b>summon</b> 262:10
365:7,11,14,16	127:12 182:9,13	175:9,18 181:15	333:10 351:20,23	265:2,25 266:1,12
366:4,6,8,13,16	187:3 199:11	215:21 227:3	352:8 362:17	266:15 267:3
366:19 367:11,16	217:23 229:5	255:16 291:19	<b>stunned</b> 186:7,12	343:21
367:18,24 368:6	231:3 240:21	293:24 294:2	211:13 279:16,23	<b>summoned</b> 255:21
368:12,14,17	248:23 262:25	296:8	280:2,11,12	256:9 267:14
369:1 370:6,8	272:25 309:2	<b>stopped</b> 256:13	333:25 334:13,19	329:20
<b>Spurling</b> 321:11	320:16 331:15	286:16 312:12	<b>stunning</b> 333:7	<b>summons</b> 340:8
<b>squad</b> 80:2,2	341:10 347:2	<b>stopping</b> 57:23	<b>stuns</b> 87:24 337:6	<b>superficially</b> 90:2
<b>squared</b> 52:17	356:11 367:7	58:2	362:13,14	90:15
<b>squeeze</b> 269:20	<b>statement</b> 94:20	<b>stops</b> 14:9	<b>subdivision</b> 174:24	<b>superior</b> 65:7 257:4
<b>staged</b> 112:5	152:11,12 170:20	<b>story</b> 353:21	174:25 195:7,9	<b>supervisor</b> 197:21
<b>stamina</b> 110:1	235:19 245:14	<b>straight</b> 48:5 51:20	<b>subdue</b> 179:9	266:6,7
<b>stamp</b> 168:25	275:11 336:6	51:20 286:13	<b>Subia</b> 2:14 5:18	<b>Supp</b> 20:24
<b>stamped</b> 151:21	340:18 354:3	289:19	371:24 372:5,21	<b>supplements</b> 19:23
<b>stance</b> 52:9,12,16	<b>statements</b> 141:21	<b>strap</b> 75:9,11	<b>subject</b> 50:23 76:23	<b>supposed</b> 62:25
200:19	166:4	<b>strapped</b> 312:11	87:12 88:10 89:10	141:24 168:16
<b>stand</b> 61:6 99:4	<b>states</b> 1:1 5:9 20:4	314:17 315:1,4,16	93:10 94:24	173:15 200:15,17
134:5 369:18	76:20,23 77:14	315:17 316:4	108:10 109:15	<b>sure</b> 9:17 10:14,16
<b>standard</b> 97:15	82:19 83:10 84:9	318:20	110:6,9	22:4 23:7 29:12
167:20 169:7	86:5,21 87:3,24	<b>street</b> 3:11,15	<b>subjects</b> 95:12	30:13 39:6 43:23
<b>standards</b> 85:10	88:13 89:18 90:6	297:12,21	<b>submitting</b> 58:6	51:19 52:23 98:17
97:16	90:10,20 91:6	<b>stress</b> 93:17 244:1	62:6 63:12	101:7 103:9,16
<b>standing</b> 34:22	93:13 94:2,10	281:24	<b>subpoenas</b> 14:7	112:14 113:24
51:6,7,21 370:3	97:11,22 101:25	<b>strike</b> 49:17 186:5	<b>subscribed</b> 374:22	115:4 118:20
<b>standpoint</b> 241:1	102:22 115:1	208:5 287:4,6,10	<b>subsequent</b> 59:20	123:23 138:5,6
341:3,5	117:8 140:18	287:11 303:23	77:11	147:22 151:11
<b>start</b> 19:6 27:20	142:18 147:13	<b>strong</b> 264:19	<b>subtract</b> 52:25	162:23 168:19
130:12 203:15	<b>stating</b> 44:7 197:10	<b>struck</b> 62:11,15	<b>successful</b> 60:8	198:7 201:23



203:8 205:22	<b>T</b>	280:22 312:6,8,12	63:7 64:1,2,5,21	243:10 244:21
240:24 249:19	<b>T</b> 373:1 374:1	312:14 339:8	71:23 72:11,13,17	245:3,10 255:5,9
250:10 255:10	<b>tactic</b> 50:2 134:4	342:6,12 346:5	72:20,24 73:4,11	255:12,17,18
272:11 278:24	187:18	<b>talks</b> 86:13 88:5	76:4,13,23 77:3,9	260:5 279:6,10,20
279:1,25 298:11	<b>tactical</b> 200:1	120:20 363:21	77:15,23 78:25	281:19 284:7
325:19 347:18	<b>tactics</b> 50:5	<b>Tammy</b> 159:14	79:3 80:6,6 81:21	286:4 287:12
353:15 359:24	<b>take</b> 8:18,20,23	<b>tangled</b> 60:3	82:5,20 83:6,6,10	290:2,5,6 291:14
365:24	28:9 31:4 33:11	<b>tape</b> 358:20	84:2,2,9,16,18	291:24 294:5
<b>surprised</b> 114:8	56:3 58:9 60:17	<b>tapes</b> 81:10 218:8	85:1,10,12,13,25	297:2 298:14,15
<b>surrounding</b> 90:1	63:13,14 69:3	323:7,11	87:1 88:7 89:18	299:22 303:19,23
90:14	72:5 79:23 80:19	<b>target</b> 83:15,21	90:7,21 91:1	304:1 308:22
<b>surviving</b> 1:5,8	81:8 96:10 109:6	86:19 200:17	92:13,21 93:11,19	311:22 319:2
<b>susceptibilities</b>	115:3 117:15	212:14,25 213:3,4	96:19 97:3,19	336:3,7,10 337:4
95:2,9 98:6	121:3,5,9 132:19	213:14 214:25	98:8 99:13 102:11	337:11 346:8,10
<b>susceptible</b> 94:13	134:3,4,5 144:11	215:1 218:24	103:18 106:19	348:6,8 355:5
102:1,2,21 120:20	149:21 151:9	219:9 220:13	108:2 109:3,7,20	357:14,17 360:3,7
235:2,10 239:12	157:20 158:5,8	222:1 350:8,16	110:8 114:20	360:9,13 367:13
239:15,18 363:22	196:22 202:14,16	351:3,5 352:15,17	117:4 118:2,14	368:4,16 369:3,10
367:14	202:19 211:11,12	354:15	120:9 132:13,13	<b>TASER's</b> 133:22
<b>suspect</b> 104:23	218:6 224:10	<b>targeted</b> 53:15	133:9,12,22	141:3,8 144:24
105:16 174:25	259:22 269:18	349:2 352:10	134:16 135:12	183:23
248:14 250:4	283:17 284:11	<b>targeting</b> 218:18	139:6,25 140:10	<b>tasered</b> 178:13,17
278:17	300:24 324:24,25	219:14	140:13,25 141:12	181:6
<b>suspected</b> 209:11	328:22 329:12	<b>targets</b> 221:24	141:15 142:19	<b>TASERs</b> 135:11
239:7,11	<b>taken</b> 1:23 61:9	<b>tase</b> 217:4 305:10	143:22 144:12,12	195:20,23,24
<b>suspects</b> 319:6	81:14 99:7 115:9	305:18,21	144:13,21 145:17	196:6 235:2
<b>suspicion</b> 39:18,20	116:5 121:17	<b>tased</b> 43:2,3,7	145:25 146:4,14	<b>taught</b> 77:17 92:13
39:24 249:21	128:21 158:15	157:23 304:25	146:16 150:7	133:8 145:20
250:11,15,18,19	160:22 194:9	305:5,6 306:2	154:14 157:11	155:15,16 164:18
251:2,5,10 253:3	217:8,11 218:12	318:20,25 319:9	176:2 177:4,8,11	176:14 187:19
253:14 263:17	265:17 300:4,18	319:11 320:1,7	177:18,21 178:2,5	200:2 226:1
264:3	311:12 323:17	322:20 334:8	178:9 179:8,12,19	246:18
<b>Swansboro</b> 161:18	<b>takes</b> 36:20 303:16	335:5 346:17	180:6,12,14,22	<b>teacher</b> 202:20
<b>swear</b> 6:6,9 99:22	<b>talk</b> 167:5 190:20	347:6,9	181:25 184:22,25	<b>team</b> 16:2,12,17
99:22	202:1 205:25	<b>TASER</b> 4:9,10,19	195:19 196:10	<b>technique</b> 50:15
<b>swearing</b> 122:11	209:14 247:5	4:19,20,21,22	197:4,6,12,17	135:8,13 187:19
<b>swinging</b> 286:22	259:18,19 277:22	14:24 15:7,23	198:22 200:23	212:6 247:2 296:3
<b>switch</b> 81:9	297:20 338:11	18:9,10 36:1,5	203:10,14 205:9	<b>techniques</b> 246:24
<b>sworn</b> 6:14 7:2	339:7	40:4,7,15 41:5,13	205:16,18 206:14	248:1 258:18,22
99:18 100:15	<b>talked</b> 162:20	41:14 42:9,19	206:17,23 208:18	296:16
122:12 374:22	<b>talking</b> 25:21 71:11	43:1,9 46:20 50:3	209:16,16 211:5,9	<b>tedious</b> 225:8
<b>symptom</b> 263:9,15	81:21 96:1 110:24	51:2,25 53:7,21	212:22 215:20	229:22
<b>symptoms</b> 237:10	159:2,5,6 205:3	53:24,25 54:1,1,1	227:1,5,7 230:17	<b>teeth</b> 315:7
237:17,19,19,21	212:4 218:18	54:9,13,17,19	232:7,14,15	<b>tell</b> 14:3 18:20
245:20	234:10 248:21	55:9 56:23 58:11	233:19,25 236:25	24:22 56:17 64:7
		58:12 62:17,24	239:4 240:7,11	69:8 74:18 112:18

118:10 129:22	<b>term</b> 231:5,16,18	33:13 51:13,15	194:18 204:16	89:17 118:9,9
130:4,9 137:13,20	233:2,6 238:9	64:15 75:19 81:11	205:22 210:17	121:19 141:14
153:21 155:8	245:17	115:6 125:6	213:16 220:22	153:24 154:7
161:8 175:17	<b>terms</b> 246:13 275:3	130:15 134:12	225:9 238:3	157:4 161:5,10
181:8,20 182:8	<b>Terry</b> 3:14 6:2	205:11 347:23	240:15,21 252:11	162:4 171:23
184:7 185:8	143:16 152:16	359:3,4 370:20	261:3 269:23	203:21 218:9
198:11 203:18	<b>terry@wmwlaw....</b>	<b>Thanks</b> 369:14	287:10,13 289:10	230:12 252:9
204:14 215:18	3:16	<b>thereof</b> 372:10	290:17,20 291:7,8	269:24 270:25
224:19 230:22	<b>test</b> 80:19 157:20	<b>thing</b> 104:5,12	292:20 293:8	285:7
231:1 242:13	202:25	106:3 120:17	295:2 297:13	<b>three-fourth</b> 90:12
246:25 247:1,3	<b>testified</b> 7:3 38:3,9	124:6 126:17	305:10,21 306:12	<b>three-fourths</b> 91:14
256:20 259:14	40:2,20 54:6	129:16 171:11	307:23 308:13	<b>throat</b> 219:15
269:15 270:16	81:23 84:11 103:2	197:5 226:12	309:7 320:19,23	222:16 223:7
272:15,18 280:5	103:17 104:9,22	263:3 272:8 276:5	321:1,4,21 329:9	<b>throwing</b> 38:19
282:23 303:25	139:5,8,25 140:3	285:14 292:20	332:25 340:25	<b>thumb</b> 269:19
304:7,17 319:25	140:4 186:16	298:16 343:4	349:12 352:7,14	<b>ticket</b> 170:3 171:16
334:4 335:4,5	191:1 279:3	353:19 366:25	357:4 362:25	174:14 195:6
336:14 341:12	306:11 308:8	368:22	<b>thinking</b> 258:13	<b>tickets</b> 170:19
343:7 344:15	349:15,18 361:10	<b>things</b> 14:7 28:12	263:7 290:20	<b>tie</b> 75:6
346:3 360:16	361:17 366:21,23	36:3 38:21 71:15	307:2	<b>Tift</b> 1:13,15,17,19
361:12	367:21	71:17 98:10	<b>third</b> 133:1 218:21	5:8 11:14,17,22
<b>telling</b> 192:24	<b>testify</b> 7:22 221:13	115:13 124:21	225:9,19 292:20	11:25 12:8,11
257:8 276:12	228:7 308:9,10	127:25 129:6,14	300:21	13:3,6,8,20,22
287:24 288:20	362:25	137:8 143:10	<b>Thirty</b> 140:10	14:15,23 15:17
315:12 316:2	<b>testimony</b> 6:9	144:3 173:12	<b>thoroughly</b> 348:5	76:3 78:5 79:21
317:24 320:21	30:13 38:2 41:3,7	194:1 204:7 208:1	<b>thought</b> 60:23	79:23,24 82:1
321:17 354:14	67:20 75:5 100:14	208:13 211:21	99:14 136:13	84:23 85:6,11
355:7	101:6 105:3,4	213:9 246:11	148:2 156:7	111:10 144:20
<b>tells</b> 125:19 242:4	110:12 123:16	258:5 260:22	177:20 209:2	145:14 148:25
242:15	124:15 129:5	261:4,10,11,12,16	228:11 234:10	160:9 162:18,24
<b>temperature</b>	136:7 138:16,19	262:20 263:15	243:7 261:16	164:10,15,19
107:12	138:23 143:3	264:17 281:23	262:3,6 266:8	165:14 167:11
<b>temporarily</b> 83:14	147:23 190:8,12	285:6,10 339:13	287:11 304:14	168:6 169:11
83:20 97:23	192:7 229:14,16	339:14 346:23	307:11,12,13	198:10 208:22
<b>ten</b> 114:18 152:17	229:17,23 230:6	359:12,19	308:9,25 309:2,5	224:24 234:1
178:13 190:13	231:9 240:14	<b>think</b> 9:18 13:12	320:12 341:2	236:17 274:8
203:22 214:15,15	305:9,17,18	16:19 19:22 80:24	343:7,14 368:21	371:3 372:3
227:2 309:20	346:10 349:2	99:21 100:3	<b>threat</b> 49:19 50:23	<b>Tifton</b> 2:10 3:4,7
322:25 346:16	352:10,23 356:8,9	101:14 129:13,14	61:24 305:19,20	4:15 5:14 20:5
350:3	356:15 358:6,10	129:18 131:22,23	305:23	22:19 164:24
<b>ten-minute</b> 310:21	361:21 372:8	132:5 137:17	<b>threatened</b> 294:21	<b>time</b> 5:11 11:4 12:5
322:20	373:3	143:11,18 147:19	<b>threatening</b> 294:15	12:6,9 13:16
<b>tendered</b> 218:20	<b>testing</b> 185:13	147:21 170:12	295:14 298:1	18:13 19:2 21:5
<b>tense</b> 173:9	<b>text</b> 158:6	177:10 179:2	302:12	26:20,22 30:20
<b>tenses</b> 86:18	<b>Thank</b> 6:13 28:18	186:16 191:19	<b>three</b> 24:20 27:25	31:11,19 35:18
<b>tensing</b> 63:1	28:23 29:13 32:13	192:12 193:9	29:1,7 53:24 89:7	36:1 37:1 40:16

40:18 41:7 42:10	318:12 321:10	183:5 196:21,23	211:24 258:15,23	102:11,18 103:19
43:24 45:11,15,22	323:15,20 324:25	197:1,19 199:5,10	<b>totally</b> 307:22	103:22 105:21
46:24 48:3 50:8	325:22 328:18	207:19 213:14,20	<b>tote</b> 244:21	106:16 108:6
50:15,19 51:7,16	331:22 333:7,10	214:2 219:24	<b>touched</b> 62:7	109:13,23 110:2
52:4,5 56:2 60:15	333:25 336:18	220:11 222:23,23	340:11	118:2,14 140:16
61:7,11,24 62:14	352:21,25 353:17	257:10,12 260:4,5	<b>touching</b> 362:15	141:9,19 144:19
64:11,14,17 67:21	353:22 354:12,15	270:19 278:24	<b>TPO</b> 160:25	144:25 145:7,19
73:18 74:21 75:1	354:23 359:19	296:8 317:6 320:7	<b>traffic</b> 13:22 14:4,8	146:3,14,22
77:25 79:17,20	360:4 365:23	329:3 338:18	14:8,9,10,13,14	147:18 148:21
81:12,17 95:18,21	368:9,20 369:10	345:7,13 354:8	14:18,19,20,21,22	149:9,21,24 150:8
95:24 99:5,8	369:22	355:18 357:21	14:23 170:3,19	155:2,3 156:10,12
105:11 107:4,7,20	<b>times</b> 37:3 53:24	364:20 365:14,18	171:2,9,25 172:24	162:5,15,19 163:4
110:20 111:6	67:8,17 112:25	365:21 370:7	194:20 195:6	163:12 164:10,23
112:1,4 114:2,19	114:11 178:13,18	<b>tone</b> 247:8	197:15,16	165:5,10,11,12,13
114:20,23 115:7	179:8,9 180:5,13	<b>tool</b> 259:3	<b>train</b> 144:10	165:18,18 167:9
115:10 116:3,6	181:5,10 191:25	<b>tools</b> 107:21,25	<b>trained</b> 42:20 99:15	167:10,21 175:22
118:25 121:16,20	192:1 203:22	259:2,12,17	99:20 108:7	176:19 179:11
123:4 124:3,13	204:11 205:21	<b>top</b> 19:25 54:25	134:25 139:18	181:20,25 182:1
126:18 127:6	269:24 279:11	89:23 90:11 91:7	140:12 146:1,11	183:14 184:16,18
128:2 129:13	288:24 293:23	91:9 119:13	150:8 167:6 176:8	194:14 195:19
131:25 133:12	301:20 304:25	146:19 157:11	197:4,6 200:14	196:5,10,18,23
136:2 137:22	305:5,22 308:22	205:23 216:6,7	204:13,18 213:24	197:20,24 198:4
138:9 152:11	318:20 319:9	218:21 269:19	219:21 222:20	198:11,17,22
158:13,16 165:25	322:20,25 329:11	281:4 332:18	258:9,19 259:13	201:20 202:13
172:24 173:11	334:13 346:18	<b>Torres</b> 79:13,14,18	263:24,25 264:2	211:15 212:14
175:5,12 190:2	349:9,16 350:3,18	79:20 103:18,21	269:8 350:15	214:17 219:3
191:20 194:7,10	<b>Tip</b> 369:8	139:22 141:8	364:7,7,9,10	221:8 222:21
196:16 197:22	<b>tired</b> 214:14 310:20	145:1 146:1,10	365:4 366:18,21	223:6,19,20
198:21 201:11	<b>title</b> 197:14	147:1 148:22	<b>training</b> 15:16	224:17 226:15
205:15 211:11	<b>titled</b> 65:17 66:7	150:10 155:13,15	16:16,20 18:9	227:19 228:12,16
217:9,21,22	93:7,24 101:16	156:23 162:20	37:14 39:17 42:18	229:1 230:17
218:10,15 231:23	<b>TJ</b> 7:14,15	164:18 165:1,13	42:19,20 43:8	231:23 232:2,18
237:18 248:13	<b>today</b> 5:11 67:15,20	165:16 181:8,20	50:13 54:3 55:8	233:12,18 238:16
251:9 253:2 255:8	103:5 104:3	181:21,22 183:17	55:20 56:7 63:25	242:3,25 244:16
260:5 262:9	117:25 118:10	199:5,16 201:19	70:16 73:9,19	244:21 245:16
263:22,25 265:15	124:6 126:24	211:16 219:22	77:17,22 78:4,6	246:14,15 257:21
265:19 269:8	127:12 128:1	222:20 223:3,9,12	78:20 79:9,12,23	257:24,25 266:13
273:1 274:11	217:9 259:15	223:20 224:9,17	80:1,3,7,15 81:22	274:7 275:13
275:5 277:14	321:7 352:23	226:1 228:12	82:9,15 83:3,24	276:20 319:14
279:4,22,22 299:5	367:21 368:20	230:22 231:18,22	84:16,18 87:1,6	348:7 351:19
299:9,25 300:12	<b>today's</b> 122:15	232:23 236:7,13	87:16,22 88:16	360:14,22 362:5
300:21,23 301:6	128:5	238:19 245:22	89:8,13 92:5 93:9	362:14
301:13 302:3,4	<b>told</b> 35:4 37:2 65:1	319:24 320:6	93:19 94:6,16	<b>transcribed</b> 372:9
304:1,19 305:10	127:3 139:20,22	350:21 351:20	95:4 97:3,14,16	<b>transcript</b> 369:25
306:2 308:21	150:6,10,16 156:7	<b>total</b> 87:9 279:13	97:19 98:8,19,20	371:21 372:10,10
310:10 312:9	157:19 181:24	<b>totality</b> 172:17	100:3,17 101:23	373:3

<b>transpired</b> 330:3	341:11 372:9	306:15 320:1,8	<b>Uh-huh</b> 194:6	298:12 306:21
<b>treatment</b> 11:11	373:4	334:8,19	<b>un</b> 340:19	308:18 317:13
<b>tried</b> 209:14 210:8	<b>truth</b> 6:10,10,11	<b>twist</b> 153:5	<b>unaffected</b> 54:7	348:4,9 353:15
235:23 296:2	<b>truthful</b> 152:11	<b>two</b> 8:9 18:22 21:18	<b>uncertainty</b> 37:20	354:19
339:15 356:16	<b>try</b> 8:18 35:24	29:1,7 55:1 58:21	47:10	<b>understanding</b>
<b>trigger</b> 42:6 59:17	50:20 72:11	72:17 78:17 81:16	<b>unclarity</b> 8:11	10:14 11:3,5
62:18 67:7,16,21	109:24 153:5	88:19 90:12 91:13	<b>unclear</b> 21:16	41:22 77:21 82:25
132:23 133:3	181:17 207:24	91:14,19,24 92:14	110:19 212:20	83:8,23 84:21,25
200:6 203:21	208:10 213:7,9	93:2 96:22 97:6,8	<b>uncles</b> 159:25	85:19 86:18
204:11 243:9	226:17,23 247:5,5	101:15 120:1,5,18	<b>unclipped</b> 29:8	130:19 132:20
299:6,11,15,15,25	257:12 283:21	120:23 121:15	<b>unconscious</b> 271:7	133:5 146:5
300:3,12,21	303:7 310:7	129:16 138:11	271:11,17,24	222:13 232:9,10
301:13,19 304:1	324:15 326:7,10	139:15 148:7	272:1,9,12,13,16	232:12 235:9
304:18	335:25 340:14	152:19 153:23	313:20 346:19	237:12 239:14
<b>triggered</b> 66:24	356:22	154:18 155:19	347:10	240:13 242:3,9
133:2	<b>trying</b> 24:12 49:17	157:2 161:6	<b>underneath</b> 34:12	245:3 348:14,21
<b>Trip</b> 5:3	50:17,18 56:19	164:12,25 165:19	34:19 74:25 191:3	<b>understood</b> 8:16
<b>Tripp</b> 1:15,23 2:4	60:18 68:15 71:6	171:23 172:3,9	<b>understand</b> 7:21,25	23:19 24:1 84:1
3:13 4:3 7:1,11	72:2,9 74:25 75:2	174:13 178:23	8:13,25 9:5,9	84:12 142:4 147:8
8:25 10:4 19:13	99:20 143:14	186:1 199:20	10:17 11:1 12:25	150:20 156:9
75:24 81:17,20	152:24 158:7	200:12 203:21	15:7,10 17:20	217:14 228:15
83:23 86:7 89:1	175:5 177:19,19	205:22,25 215:19	18:2 24:12 30:13	232:17 245:17
96:13 99:18	207:4 208:7 236:9	216:3 223:15	43:2 45:6 51:1	<b>Underwood</b> 1:3 5:4
115:13 116:9	247:14 265:13	230:10 281:6	55:20 68:15 75:5	<b>unexpected</b> 114:17
121:15,20,24	269:22 278:20	304:23 315:18	78:4 80:21 82:22	<b>unforeseen</b> 98:5
128:9 154:18	309:5 311:5 325:3	319:5 334:13	84:9 85:2 86:16	<b>unintentionally</b>
159:12 161:11,16	328:5 331:23	363:20,25 364:1	88:11,18 89:8	108:18
201:13 218:10,15	349:20 355:25	367:4,5 368:15	98:21 110:12	<b>unit</b> 21:11,24 256:6
218:18 323:15,20	365:24	<b>two-thirds</b> 57:10	113:24 118:22	<b>United</b> 1:1 5:9
323:23 329:6	<b>turn</b> 30:15 41:15,25	<b>type</b> 53:23 55:11	126:23 130:16	<b>University</b> 17:4,14
367:7 368:19	64:20 132:5,9	66:7,24 68:5	132:1 134:10	<b>unknown</b> 47:23
369:1,21 373:3	215:8 218:20	163:9,12,13	135:9,11,14	<b>unlimited</b> 182:4,5
374:21	221:20 222:15	186:25 187:22	141:25 144:22	305:10,11,21,22
<b>truck</b> 24:13 25:6,12	225:9 227:2 293:4	195:3 207:21	145:11 148:1	<b>unnatural</b> 289:8
25:15,16 27:13	293:11 298:11	268:15 325:11	149:7,25 154:4	<b>unnecessary</b>
<b>true</b> 44:18 130:18	340:14 360:8	<b>typical</b> 131:12	167:2 171:14	193:10
136:4,8 144:8,18	<b>turned</b> 41:23 130:7	135:8 250:6,25	176:11 182:22	<b>unreasonable</b> 9:8
152:9 170:20	152:14 286:15,16	<b>typically</b> 20:16	193:3 224:7	11:7
228:18 231:11	331:2 353:5	21:17 39:5,8	227:23 230:16	<b>unresponsive</b>
237:2 238:9	<b>Turner</b> 160:15	42:24,24 43:4,4,5	231:23 238:8,11	337:17,21,24
244:24 251:23	<b>turning</b> 296:14,19	52:17 54:14 60:6	239:16 240:25	338:3,19 339:3,16
264:5,11,12,15,16	297:1,5	108:11,14,21	244:22 245:5,7	339:17 340:20,23
264:20,23 273:4	<b>Twenty</b> 57:14	198:8 211:4 213:3	246:13 247:15,16	341:1,4,11
278:25 329:13	<b>Twenty-seven</b>	213:3 214:1 258:7	250:10 251:17	<b>unstable</b> 107:10
336:2,8,12,22	153:12		253:11 256:8	<b>upper</b> 313:4 344:12
337:19 340:19	<b>twice</b> 243:6 279:16		273:22,25 287:7	345:20
		U		

<b>upside</b> 188:17	195:20,23 232:13	41:11 56:5 62:14	<b>violated</b> 139:9	195:18 198:14
<b>urgency</b> 47:22	247:25 268:25	69:24 70:13,20	140:5	203:11 211:11
<b>usage</b> 268:15,18	269:6 270:3	73:6 111:16	<b>violation</b> 169:25	213:22 215:8
<b>use</b> 4:11 11:11 38:7	272:22	112:22 114:18	171:3 172:24	216:17 217:2,21
43:24 72:21 76:12	<b>utilized</b> 77:15	115:1,2 124:10	194:20	220:20 224:2
77:17 84:16,19,22	139:1 147:17	125:4,13 130:12	<b>violations</b> 171:25	230:3 266:10,25
85:1,9,10,14,19	194:16 203:11	138:7 243:13	<b>violence</b> 207:8,9	272:22 275:2
86:6 94:2 98:1,2	204:17 205:1,6,16	269:23 275:2	<b>violent</b> 206:12	280:7 288:18,24
102:2 106:5,20	246:5	279:25 280:4	207:20,23 208:8	298:10 303:25
108:7,25 109:3,5	<b>utilizes</b> 145:1	287:19,25 288:2	208:10	319:7 330:13
109:8,11,20 110:8	<b>utilizing</b> 186:25	288:17 291:16,18	<b>vital</b> 310:4 323:24	335:17,24 337:12
115:19 133:13		292:14,17 293:1	338:23	344:5 349:11
134:6 137:9	<b>V</b>	294:1,13 295:9	<b>vitals</b> 311:13	353:2 354:5
143:13 144:19	<b>Valdosta</b> 1:2 5:10	296:24 297:23	<b>voice</b> 247:8 296:5	359:18 361:22,25
145:19 146:1	<b>various</b> 28:25	302:9,10 303:2,6	337:16 342:8,21	364:8
162:16 163:11,11	<b>vehicle</b> 24:14 25:25	303:9 304:3,10,21	<b>volume</b> 13:9	<b>wanted</b> 9:17,20
164:11,20 165:7	26:6 27:6 32:24	306:1 319:1 322:2	<b>voluntarily</b> 10:10	58:25 123:12
165:22 166:6,23	32:25 33:3,7,14	330:14,15 332:7	<b>voluntary</b> 54:20	124:6,20 134:11
167:6 168:5 169:6	110:13,15,22,24	332:23 333:5,23	201:8,10	217:25 364:18
169:7,9,24 170:2	111:7 113:4	334:2,6 335:2,18	<b>volunteer</b> 275:6	368:22 370:7
170:5,8,12,18	114:21 129:23	336:1,21 337:15	<b>vs</b> 1:10 5:6 373:2	<b>wanting</b> 349:16
171:3 172:10,13	130:2,20 131:14	342:1 343:6 344:3		<b>Ward</b> 160:5
172:23 174:13	131:16 252:15,17	344:22 345:2,21	<b>W</b>	<b>ware</b> 320:11
175:7,17 176:6,8	270:20 311:12,16	346:1 357:18	<b>wait</b> 211:2 265:13	<b>warned</b> 348:6
176:12,20 183:2	319:7 326:20	362:24 369:23	349:4,4	349:21
185:17 187:8	331:16 340:6	370:19	<b>waited</b> 47:16,20,21	<b>warning</b> 53:20,22
193:12 194:19	342:13,17 347:17	<b>videographer</b> 3:18	48:2 298:7	53:23 82:20 83:16
195:3,14 196:12	<b>vehicles</b> 129:20	5:1,16,19 6:5 34:8	<b>waive</b> 44:15	119:13,23 120:11
197:4,6 199:14	<b>verbal</b> 53:23 72:8	61:6,10 81:9,11	<b>waived</b> 44:22	157:5 235:1
200:5 211:11	339:9 340:3	81:15 99:4,8	<b>walk</b> 188:22 252:10	<b>warnings</b> 4:21,22
212:4,22 233:11	<b>verbalize</b> 340:9	115:7,10,24 116:3	297:12,20,21	82:19,23 83:2,5,6
233:19 239:13	<b>verbalizing</b> 338:14	116:6 121:6,11,14	315:20	84:10,12 96:19,23
245:3 246:21	<b>verbally</b> 248:21	121:18 158:11,13	<b>walked</b> 236:23	97:2 99:14 101:10
258:19 259:6,11	290:18 339:9,10	158:16 194:4,7,10	297:11 323:23	106:17 117:5,8
273:21 274:21	341:2	218:8,13 265:15	329:12	118:1,3,3,8,14
275:14,16 295:21	<b>verification</b> 122:10	265:18 267:1	<b>want</b> 9:25 11:13	141:3 142:9
296:2 321:5 364:8	<b>version</b> 82:6 98:17	323:7,11,13,18	17:16 29:14,23	144:12 147:9,17
364:21	98:18 154:14	359:22 369:15,18	30:13 42:5 43:6	148:15,20 149:5,8
<b>User</b> 82:5,21	221:4 224:12	<b>videos</b> 341:24	44:25 58:13 60:17	150:7 154:8,14
146:16 157:5	225:15	<b>videotape</b> 5:2	73:7 98:15 117:15	163:14 165:12,18
<b>uses</b> 84:5 85:3	<b>versus</b> 119:21	<b>VIDEOTAPED</b>	118:19 121:3	184:25 224:8
141:8,11 348:6	171:17 173:5	1:23 2:4	122:17 123:14	227:5 228:16
<b>usual</b> 371:18	174:1 195:2 208:8	<b>view</b> 35:25 36:16	128:1,2 144:10	230:17,24 231:24
<b>utilize</b> 65:11 72:11	<b>vicinity</b> 22:3	<b>viewed</b> 41:11	149:3 158:19	232:7 233:22
72:13 165:1	<b>victim</b> 250:3	<b>violate</b> 139:11	167:13 169:22	234:14 277:4
176:16 187:22	<b>video</b> 40:23 41:8,9	140:7	181:16 189:9	350:19 363:17



<b>warrant</b> 206:8,9 208:23,24,25 209:1,3,4 249:3,5 297:2	366:7	<b>websites</b> 236:2	44:20 45:15,25	239:6 240:1,19
<b>warrants</b> 14:6	<b>we're</b> 9:23 19:17	<b>Webster</b> 3:6 5:25	47:18 61:3 64:10	241:13 242:8
<b>wasn't</b> 13:10,10,13	61:7,10 72:8	44:12,23 152:6	81:2 98:15 99:12	243:11,20 244:7
23:14,14 39:6,11	80:25 81:13,17	153:1 215:5	99:24 100:10	245:1,12 246:6
41:7 65:2 104:15	99:5,8,20 101:5	219:24 354:8	101:2,3,7 115:21	249:18 253:5
123:18 139:2,7,10	101:14 115:7,10	<b>Wednesday</b> 2:6	116:2,13,18	254:5 256:25
181:19 196:25	116:3,6 121:8,11	<b>week</b> 173:20	118:24 119:3,7	258:14 259:4,7,24
204:15 208:24	121:16 141:1	<b>weeks</b> 162:14	121:2,5,8,13	260:13,20 261:21
210:7 256:10	158:14,16 187:19	<b>weigh</b> 174:18	126:2 129:7	262:12,22,24
263:25 265:14	194:7,10 198:12	<b>weight</b> 190:1	135:17 136:5,25	263:10,19 264:6
289:18 314:3,5	218:11,15 228:1,5	345:23	141:6 142:11,17	264:21 265:9,12
316:8 325:20	257:5,5 265:15,18	<b>went</b> 12:1,24 14:15	143:1,4,9,18,21	266:3,20 268:9
327:6 329:1	295:10,22 297:24	21:24 22:2,4	143:24 144:2,5,14	270:4 271:8,13,18
347:19 357:24	302:11 304:22	23:24 32:16 40:2	145:4 147:10	272:6,10 275:8
364:7,9,10 367:18	323:20 332:1,4	47:2,3 54:19 62:6	148:2 149:16	276:11,17 278:6
<b>watch</b> 41:8 243:13	353:25 369:22	72:1 83:24 110:19	150:12 151:18	279:18 280:20
280:3 287:19,24	<b>we've</b> 106:15	112:19 124:24	152:1,7,13,18,21	281:21 282:4,24
288:2 293:23	162:20 163:14	148:15 154:8	152:23 153:5,7,10	286:18,25 287:18
335:17	226:8 294:2	176:25 196:18	153:13,17,25	288:8,12,16,20,23
<b>watched</b> 40:23	350:18 353:16	206:13,13,15,15	154:4,12 156:14	289:2,17,24
111:16 199:8	362:10 366:23	209:14 217:1,19	158:5,12 166:8,13	290:21 291:2
<b>watching</b> 70:12	367:20	224:8,16 236:2	166:19,25 167:20	293:12,17 294:16
125:3 335:6	<b>weapon</b> 14:25 15:6	253:2 256:4,6	168:14,19,24	294:20 295:3
<b>way</b> 21:21 32:19	15:9 35:9 37:23	284:9 311:16	169:2,4,6 170:10	297:14 298:15,19
35:16 36:2 39:23	76:4 90:7,21	313:5 325:18	170:21 171:6,18	299:19 300:5,8
57:10 80:4 96:23	108:3 134:4,13,16	342:17,20 352:7	172:21 173:7	301:1,23 303:20
100:2,6 111:24	136:3,4,24 137:22	<b>weren't</b> 74:22 75:2	174:3,16 175:10	305:2,14 306:18
139:18 155:10	162:16,19 164:11	147:22 204:13	177:5,12,23	306:23 307:1,18
156:21 158:20	164:20,25 165:8	269:8 278:24	179:22 180:15,23	307:20 309:11,21
166:7 204:23	183:2 199:15	309:25 356:1	183:7,10 184:5,10	310:1,17,25 311:6
206:17 237:14	200:3 205:16,19	<b>west</b> 25:11,12 32:21	184:13,17,22,25	312:16 313:7,15
238:7 259:18,19	206:20 207:7,16	32:22	185:3,5,20 186:9	313:21 314:19
259:19 287:6,10	208:14,17,19	<b>whatsoever</b> 340:7	187:2,13,24	315:22 316:6,11
289:8 313:5	211:1 232:14	<b>whichever</b> 149:2	188:18 189:4,13	316:21 317:2,5,17
326:13 332:18	239:4 246:5,22	<b>Whidden</b> 3:4	189:15 190:3,15	317:23 318:6,16
336:17 340:7,16	255:5,9,12 291:12	<b>white</b> 274:9,12,15	191:11 192:3,10	318:23 319:18
341:7,19 357:9	291:24 294:5,11	274:24 276:8,15	192:23 193:17,21	320:3,15 321:12
360:24	296:21 301:9	276:21 285:2,16	194:22 195:11,25	322:5,15,22,25
<b>Waymire</b> 3:15	304:12 306:12	285:21,24 286:5	212:17,19 214:19	323:8 325:1,5
<b>ways</b> 72:17	334:4	336:3,7,12 368:9	216:12 220:24	327:10 328:12
<b>we'll</b> 8:20,22 16:20	<b>weapons</b> 47:24,25	<b>wildly</b> 286:23	221:1,7,10,13	330:1,18,23 331:4
45:4,8 81:8 115:3	76:13 84:2 89:18	<b>Williams</b> 3:14,15	222:9 223:21	331:10,14 333:11
224:3 341:13	119:14,18,21,21	4:6 6:2,2 9:16,18	225:17,21 226:3	334:9,25 335:7
	212:5 234:1	9:23 10:1 28:24	228:3,19 229:7	338:1,7 339:20
	302:24	29:14,19,21,24	234:7,10,20 235:5	340:24 343:4,18
	<b>Webb</b> 160:5	30:2,8 44:8,10,16	236:20 237:3	345:16 346:22

347:1,13 348:23 349:4,8,12,18,22 350:2,5,9,13,17 350:22 352:12 353:9,16,19,23 354:1 355:15 356:3,5,8 357:2,4 357:7,10,12 358:9 359:6,8,11 364:9 364:10,13,15,18 364:22,25 365:3,8 365:12,15,18,21 365:24 366:7,12 366:14,17,25 368:21,25 369:14 370:9,11,15,19 <b>window</b> 27:17,20 30:14 210:10 296:13 <b>windows</b> 26:7 252:25 <b>wires</b> 57:2 60:4 <b>witness</b> 4:2 6:6,12 6:14 7:22 29:23 30:6 31:3 32:12 34:10 47:20 49:4 50:10 51:9 53:5 53:11 59:9,14,23 60:14 62:1 64:12 68:10 76:15 81:3 85:16,21 86:10 91:3 92:24 94:8 96:5 100:2,9,14 103:24 106:22 107:23 109:17 135:19,24 136:8 137:2,25 138:5 141:11 142:6,12 142:18 143:13 144:16 145:6 147:5,12,21,24 149:17 150:3,14 156:15 157:16 163:18,23 164:2 166:9,14,20 167:1 167:14,22 170:23	171:8,19 173:8 174:4,17 175:11 177:7,13,24 178:1 178:25 179:23 180:17,24 181:1 183:9,20 184:4,6 184:9,19,24 185:4 185:21 186:1,11 187:3,14 188:1 189:5,14,16 190:5 190:16 191:12,14 192:4,12,24 193:18,22 194:23 196:1 199:10 204:6 214:12,21 216:14 222:10 223:22 225:11,14 226:5 228:4,21 230:6 232:1 233:15 234:9,16 234:21 237:4 238:11 239:7 240:3,21 241:15 241:22 242:9 243:13 244:10 245:2,13 246:8 249:19 253:7 257:1 258:15 259:8,25 260:15 260:21 261:23 262:13,25 263:12 263:21 264:7 266:4 270:5 271:9 271:14,19 272:11 276:12,18 278:7 279:19 281:22 282:5,25 287:1,19 288:10 289:18 290:23 291:3 293:13,19 294:21 295:4 297:15 298:20 299:14,21 300:9 301:2,25 303:21 305:15 306:20 307:3,6,19 307:25 310:18	311:1,7 312:17 313:8,16,22 314:20 315:23 316:23 317:6,18 317:24 318:7,17 318:24 319:19 320:4,16 321:13 322:6,8,16 323:2 328:13 330:2,19 331:5,11,15 333:6 333:13 334:10 335:1,8 338:2,8 339:22 340:25 343:19,24 345:17 347:2,14 348:11 348:16,24 351:2 352:4,14 353:8,10 355:16 356:11,21 357:3,6,11,13 358:10 361:2,15 363:15 367:17,25 368:7,13,18 372:15 373:3 <b>wold</b> 188:10 <b>word</b> 182:13,13 233:11 245:22 251:1 <b>worded</b> 112:21 114:15,16 <b>words</b> 230:12 234:13 274:24 <b>work</b> 14:13 18:22 59:21 176:16 362:14 <b>worked</b> 12:5,5,11 12:15,20 13:13 15:16 <b>working</b> 12:18 17:1 17:10 19:4 <b>works</b> 203:9 <b>world</b> 103:15 217:25 <b>wouldn't</b> 118:6 131:15 203:17 204:25 343:21 <b>wound</b> 89:10,25	90:7,14,21 91:8 <b>wounds</b> 91:1,7,19 <b>wreck</b> 254:25 332:2 <b>write</b> 28:20 142:19 144:9 152:10 <b>written</b> 122:8,13 144:21 <b>wrong</b> 5:13 73:7 114:3 122:17 166:3 316:22 <b>wrote</b> 233:15 <hr/> <b>X</b> <hr/> <b>X</b> 4:1 30:25 51:11 <b>X26</b> 15:12 40:5 76:17 <b>X26P</b> 41:18 46:22 58:18 59:11 64:1 64:5,8 80:9 82:5 83:7 115:15 146:16 <hr/> <b>Y</b> <hr/> <b>Yea</b> 364:1 <b>yeah</b> 9:14,22 10:1,2 26:11 29:3 41:21 45:19,25 57:8 61:5 64:12 99:24 100:6 113:23 114:1 116:1 119:3 153:7 154:9,12 158:12 160:3 168:20 175:14 184:14 188:25 221:3,6 227:9 234:8 240:9 266:2 294:7 317:5 320:22 353:8 366:10 369:8 370:2 <b>year</b> 17:8 152:4 153:1 196:22 197:25 217:11 <b>years</b> 18:5 118:9,9 138:11 281:6 <b>yell</b> 290:12,16	<b>yelling</b> 20:9,22 21:2 21:15 26:9 27:21 30:15 31:19,22 36:3 37:8,11 38:20,21,24 39:12 71:14 249:23 250:8,23 251:15 251:18,20,21 255:14 260:21 261:16,19 262:20 285:6 290:11 296:11 <b>yellow</b> 83:17 218:24 219:6 221:23 222:4,10 223:11 <b>yesterday</b> 124:19 128:22 152:6 <hr/> <b>Z</b> <hr/> <b>zero</b> 242:21 <b>zone</b> 18:18,19,20,23 18:24 175:1 256:2 <b>zones</b> 18:21 <hr/> <b>0</b> <hr/> <b>00:1</b> 131:2 <b>00:30</b> 131:3 <b>05:03</b> 299:2 <b>05:04</b> 300:2,7,11,18 300:24 <b>05:04:16</b> 299:7 <b>05:04:46</b> 301:13 <hr/> <b>1</b> <hr/> <b>1</b> 4:15 19:8,10,14 57:9 101:11 117:9 118:3 122:24 149:20 154:13 185:10 219:8 284:15 351:9 <b>1-0</b> 304:22 <b>1:44</b> 121:20 <b>10</b> 4:10 52:6 223:24 224:4 356:1,1 358:14
---	--	--	---	---

10-18 267:21,23	16th 78:21	162:11 196:19	2D 4:18 30:3,9	4:22 265:15
10.B 371:4	17 86:12	203:20 204:11,14		4:27 265:19
10/30/18 4:21	17800 3:11	212:14 223:20	<hr/> 3 <hr/>	40 215:8,9,10 299:2
10:08 5:12	18 89:23 91:7,18	231:22 232:4	3 4:19 52:21 63:18	300:24
10:13 2:6	158:25 159:18	236:24	63:21 65:16	405 3:7
100 145:2 148:8	212:14 216:7	2019 11:23,25	153:14 203:12,20	41 216:17
261:12	18th 78:25 155:16	13:24 18:12 65:25	275:24 298:13	4330 3:15
108 88:4	196:18 197:19	66:13 78:21	356:25,25 357:4	45 185:15
109 222:16	198:21 204:14	198:18 221:5,16	3.01 4:11 168:6	
10th 8:2	236:24	224:13 225:16	3/1/13 4:22	<hr/> 5 <hr/>
11 4:10 203:22	19 4:15	2020 8:2 12:8 13:7	3:04 194:7	5 4:20 78:8,9,12
225:2,6 295:10	19103 371:8	14:15,17	3:05 194:10	198:15
11:09 61:8		2021 2:6 372:17	3:29 218:11	5:00 26:17
11:17 61:11	<hr/> 2 <hr/>	21 12:7 221:4	3:37 218:15	5:03:40 66:13
11:41 81:12,13	2 4:16 22:11,12,15	224:12 225:15	30 4:17,17,18,18	5:04:16 67:8
11:54 81:17	23:3 24:21,21	300:7	34:25 123:14	5:04:46 67:9
116 4:22	27:23 28:25 29:18	22 4:16 134:8	130:10,10,12,12	5:17 323:15
12 88:20 162:14	29:19 89:24 149:3	300:11	130:14,22,23	5:25 323:20
203:22 216:18	153:19 219:13	220 4:9	139:25 176:2	50 196:6,11 325:8
12-inch 88:14	230:10	223 4:10	204:11 292:5,8	5817-0834-4721-...
12/18/2018 154:21	2:04 335:11	225 4:10	318:21,25 319:10	2:14 371:24 372:7
12:14 99:5	2:08 335:11	22nd 2:6 5:11	322:20 346:18	372:21
12:15 99:8	2:17 158:13	23 90:11 91:8,18	303 20:5 22:1,5,19	5th 169:14 372:16
12:33 115:7	2:30 158:16	216:6	23:11,14 24:3	
12:39 115:10 116:3	20 12:8 57:6,13	24 123:15 155:20	30518 3:16	<hr/> 6 <hr/>
12:45 116:6	114:19 243:1	244 5:12	30th 96:24 117:13	6 4:20 81:5 82:3
12:52 121:16	279:13 301:20	249 65:21 298:24	118:4 203:20	93:1 146:8 202:4
121 4:5	374:22	24th 13:24 14:1	31 297:24	243:18
13 203:22	20.2 82:6	18:12 65:24 66:13	31793 2:10 3:4	6:00 19:7,7
14 203:22 295:23	2002 18:1	66:20	31794 3:7	6:13 369:22
14th 221:5,16	2006 18:6	25 57:8 217:1	33 303:8	6:20 2:7 370:22
225:16	2013 98:20 99:14	250 66:16	35 34:25 302:11	6:46 203:23
15 139:16 140:17	101:11 117:9	251 66:17	303:8	6:47 203:23
142:15 178:17	118:3 154:13	252 66:17	359 4:5	63 4:19
179:8 183:18	2015 17:9	253 66:17	36 299:8 336:11	
185:13 295:22	2016 169:14	254 68:5	368 4:6	<hr/> 7 <hr/>
296:2 320:1,8	2017 11:21 12:12	25th 18:1	381 24:23 25:12,14	7 4:4,21 88:22,23
15-14-37 371:14	18:7	27 4:11 151:3	26:4,8 27:16,21	89:1,7 358:1,7
151 4:11	2018 11:21 78:25	153:16,22 154:13	3B 171:23	7:21-CV-00040-...
1510 3:4	82:7,10 83:24	300:18		1:10
1564 2:9 5:14	96:24 97:4,19	28th 198:18	<hr/> 4 <hr/>	71 369:3,3,8
15th 82:7	98:8 101:23	2A 4:17 30:9	4 4:19 52:21 75:20	75 4:19
16 4:11 167:23	102:11,18 103:19	2B 4:17 29:22 30:9	75:21,24 91:18	78 4:20
168:5,5,9 215:10	103:24 106:16	2C 4:18 29:25 30:5	92:3,6,16 145:14	
300:2	117:13 118:2,4,15	30:7,9 32:11 51:1	168:12 357:5	<hr/> 8 <hr/>
167 4:11	155:16 157:17	51:5	4:00 249:24 250:7	8 4:9,21 96:6,7,10

96:14 99:19  
 101:15 117:2,12  
 117:23 118:19  
 120:3,15,24  
 147:16 184:24  
 185:4,5 220:15,19  
 221:1 229:9,18  
 230:8 363:17  
 364:5 367:1,4  
**80** 325:8  
**81** 4:20  
**85255** 3:11  
**85th** 3:11  
**866-624-6221** 371:8  
**88** 4:21  
**8th** 371:8

---

**9**

---

**9** 4:22 116:10,22,25  
 117:4,23 118:18  
 118:20 119:12  
 120:3,15,24 148:3  
 154:7 218:20  
 222:24 226:8  
 228:25 229:9,17  
 229:18 230:8  
 367:1,8  
**9-11-28(c)** 371:10  
**9/22/2021** 1:23  
**90** 93:4 173:21  
 243:22  
**9000** 16:8  
**911** 250:22 251:14  
**94** 93:23 202:7  
**95** 221:20  
**96** 4:21